Supreme Court, U.S.
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No. [redacted]

IN THE

Supreme Court of the United States

October Term, 1999

NANCY YOUNG-OK-SONG WEE,
JOHN CHONG-HWAN WEE, Dr.,

Petitioners,

vs.

JOHN ANDREWS, GLORIA BEAN, JOSEPH J. BLAKELY, Dr., LUIGI BOTTINI, JOHN R. BRATGE, CHARLES M. BROWN, M.D., EDWARD CALLAHAN, CHAU-FANG CHEN, Dr., CHOWDARY CHIRUMAMILLA, Dr., BARBARA A. CONNOR, Dr., CHARLES P. CONOLE, EMILIO D'ARGENIO, JAMES D. DUNDA, M.D., BARBARA A. DURAND, RICHARD FIORINI, PAUL G. FULLER, Dr., RICHARD G. GOODIN, Dr., JOHN A. GORMAN, LAWRENCE M. GLANTZ, Dr., MICHAEL HAYDUK, NEVILLE W. HARPER, M.D., WILLIAM HARTNAGEL, Dr., KIRK B. HINMAN, JAMES E. JENKS, Dr., RICHARD J. KALEBA, CAMILLE T. KAHLER, ROBERT G. KOCH, Dr., YOUNG B. KWON, Dr., GEORGE LIM, Dr., JOHN B. LUDIN, Dr., CHARLES H. LYNCH, Dr., SAMUAL MADONIA, NANCY MCNAMARA, SHUBAN K. MOZA, Dr., LINDA MURPHY, CHESTER L. PATRICK, JR., Dr., DAVID J. RAPKE, Esq., EDWARD REYNOLDS, RAYMOND ROLEWICZ, ISAM A. SAKATI, Dr., PHILIP J. SANZONE, Esq., RONALD SHAMMA, HERBERT L. SKOGLAND, Dr., BRUCE C. SLAGLE, Dr., HENRY A. SPARKS, M.D., GRETCHEN SPROCK, VICTORIA STEVENS, ARTHUR M. STOCKMAN, Dr., PAUL TEMPLE, Dr., LOUIS H. VAN SLYKE, Dr., CROUSE IRVING MEMORIAL HOSPITAL, DARLENE BURNS, ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL, the Board of Managers, the Medical Liaison Committee, the Executive Committee, the Credentials Committee, the Committee of Preceptors, the Appellate Review Committee, the Surgical Audit Committee, Medical Directors, Chief Executive Officers, LAWRENCE M. BURGREEN, Dr.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR WRIT OF CERTIORARI

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160 pp

QUESTIONS PRESENTED

1. Should the decision by the state appellate court reverse or annul the federal court judgment for the application of the Fed. R. Civ. P. Rule 60(b)(5), which provides that

> "On motion ..., the court may relieve a party ... from a final judgment, order, ... for the following reasons: * * *
> (5) ... a prior judgment upon which it is based has been reversed or otherwise vacated, * * *",

where the District Court sent Dr. Wee to the state agency and there exist the extraordinary and exceptional circumstances?

2. Did the District Court Judge Scullin abuse his discretion by failing to disqualify himself, by ruling on the fraud upon the court, misconduct, and crimes committed by him, and in denying the plaintiffs' Fed. R. Civ. P. Rule 60(b)(5) and (b)(6) motion?

3. Did Plaintiffs show changed circumstances warranting the judgment vacatur, where the judgment that is the subject of plaintiffs' motion under Fed. R. Civ. P. Rule 60(b) was affirmed by the Circuit Court?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

DR. JOHN CHONG-HWAN WEE and
MRS. NANCY YOUNG-OK-SONG WEE,
Petitioners,

VS.

JOHN ANDREWS, GLORIA BEAN, DR. JOSEPH J. BLAKELY, LUIGI BOTTINI, JOHN R. BRATGE, DR. CHARLES M. BROWN, DR. LAWRENCE M. BURGREEN, EDWARD CALLAHAN, DR. CHAU-FANG CHEN, DR. CHOWDARY CHIRUMAMILLA, DR. BARBARA A. CONNOR, CHARLES P. CONOLE, EMILIO D'ARGENIO, DR. JAMES D. DUNDA, BARBARA A. DURAND, RICHARD FIORINI, DR. PAUL G. FULLER, JR., DR. RICHARD G. GOODIN, JOHN A. GORMAN, DR. LAWRENCE M. GLANTZ, MICHAEL HAYDUK, DR. NEVILLE W. HARPER, DR. WILLIAM HARTNAGEL, KIRK B. HINMAN, DR. JAMES E. JENKS, RICHARD J. KALEBA, CAMILLE T. KAHLER, DR. ROBERT G. KOCH, DR. YOUNG B. KWON, DR. GEORGE LIM, DR. JOHN B. LUDIN, DR. CHARLES H. LYNCH, SAMUEL MADONIA, NANCY MCNAMARA, DR. SHUBAN K. MOZA, DR. LINDA MURPHY, DR. CHESTER L. PATRICK, JR., DAVID J. RAPKE, ESQ., EDWARD REYNOLDS, RAYMOND ROLEWICZ, DR. ISAM A. SAKATI, PHILIP J. SANZONE, ESQ., RONALD SHAMMA, DR. HERBERT L. SKOGLAND, DR. BRUCE C. SLAGLE, DR. HENRY A. SPARKS, GRETCHEN SPROCK, VICTORIA STEVENS, DR. ARTHUR M. STOCKMAN, DR. PAUL TEMPLE, DR. LOUIS H. VAN SLYKE, CROUSE IRVING MEMORIAL HOSPITAL, DARLENE BURNS, and ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL, the Board of Managers, the Medical Liaison Committee, the Executive Committee, the Credentials Committee, the Committee of Preceptors, the Appellate Review Committee, the Surgical Audit Committee, Medical Directors, Chief Executive Officers,
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[0024] refers to Page 0024 in Plaintiffs-Appellants' (Petitioners Dr. Wee and Mrs. Wee) Appendix on Appeal of the Court of Appeals.

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1999
PETITION FOR WRIT OF CERTIORARI

Dr. John Chong-Hwan Wee and Mrs. Nancy Young-Ok-Song Wee (hereinafter "Dr. Wee" and "Mrs. Wee") are the Plaintiffs-Appellants-Petitioners in the above-captioned case.

Dr. Wee and Mrs. Wee are representing themselves herein as the Pro Se litigants and without benefit of an attorney, and they are not attorneys nor law school graduates.

Dr. Wee and Mrs. Wee respectfully petition for a writ of certiorari to review (A) The judgment, "ORDER (summary order)" (No. 99-7008) (A.1-4), entered on December 1, 1999, (B) The "ORDER" (No. 99-7008) (A.92-93), entered on February 9, 2000, (C) The "ORDER" (No. 99-7008) (A.5-7), entered on December 2, 1999, and (D) The "ORDER" (No. 99-7008) (A.8-10), entered on December 2, 1999, of the United States Court of Appeals for the Second Circuit in this case, and
to review (E) The final "Order" (93-CV-894, Hon. Frederick J. Scullin, Jr., U.S.D.J.) (Dkt #97) (A.11-16), entered on December 15, 1998, (denying the Motion for Relief from the Order and the Judgment under the Fed. R. Civ. P. Rule 60(b)(5) and (b)(6)), (F) The final "Decision And Order" (93-CV-894 FJS-GJD) (Dkt #65) (A.17-31), entered on April 15, 1996, (G) The final "Judgment" (93-CV-894 FJS-GJD) (Dkt #66) (A.32-33), entered on April 17, 1996, (H) The "Order" (93-CV-894, Magistrate Judge Hon. Gustave J. DiBianco) (Dkt #57) (A.34-35), entered on September 2, 1994, (I) The "Memorandum-Decision and Order" (93-CV-894 FJS-GJD) (Dkt #79) (A.36-40), entered on November 19, 1996, (J) The "Document Rejection Notice" (93-CV-894 FJS-GJD) (Dkt #80) (A.41), entered on November 21, 1996, and (K) The

"Memorandum-Decision and Order" (93-CV-894 FJS-GJD) (Dkt #87) (A.42-47), entered on December 27, 1996, of the United States District Court for the Northern District of New York in this case, pursuant to the U. S. Supreme Court Rules 12, 13, 14, and 29.

1. OPINIONS BELOW

(A) The "ORDER (summary order)" (No. 99-7008, Hon. Amalya L. Kearse, Hon. Fred I. Parker, and Hon. Rosemary S. Pooler, Circuit Judges) (A.1-4), entered on December 1, 1999, of the United States Court of Appeals for the Second Circuit (affirming the Order (93-CV-894) (Dkt #97), dated December 15, 1998, of the United States District Court for the Northern District of New York), is unpublished.

(B) The "ORDER" (No. 99-7008, Hon. Amalya L. Kearse, Hon. Fred I. Parker, and Hon. Rosemary S. Pooler, Circuit Judges) (A.92-93), entered on February 9, 2000, of the United States Court of Appeals for the Second Circuit (denying the Petition for Panel Rehearing), is unpublished.

(C) The "ORDER" (No. 99-7008) (A.5-7), entered on December 2, 1999, of the United States Court of Appeals for the Second Circuit (denying the cross-motion for sanctioning the defendants' attorneys and the defendants), is unpublished.

(D) The "ORDER" (No. 99-7008) (A.8-10), entered on December 2, 1999, of the United States Court of Appeals for the Second Circuit (denying the cross-motion for disciplining the defendants' attorneys and the judges), is unpublished.

(E) The final "Order" (93-CV-894, Hon. Frederick J. Scullin, Jr., U.S.D.J.) (Dkt #97) (A.11-16), entered on December 15, 1998, of the United States District Court for the Northern District of New York. (Denying the Motion for Relief from the Order and the Judgment under the Fed. R. Civ. P. Rule 60(b)(5) and (b)(6)).

(F) The final "Decision And Order" (93-CV-894 FJS-GJD, Hon. Frederick J. Scullin, Jr., U.S.D.J.) (Dkt #65) (A.17-31), entered on April 15, 1996, of the United States District Court for the Northern District of New York. (Dismissing the complaint, the

motion to file a supplemental complaint, and the more motions).

(G) The final "Judgment" (93-CV-894 FJS-GJD, District Court Clerk George A. Ray) (Dkt #66) (A.32-33), entered on April 17, 1996, of the United States District Court for the Northern District of New York. (For the above dismissal).

(H) The "Order" (93-CV-894 FJS-GJD, Magistrate Judge Hon. Gustave J. DiBianco) (Dkt #57) (A.34-35), entered on September 2, 1994, of the United States District Court for the Northern District of New York. (Staying the motion to file a supplemental complaint).

(I) The "Memorandum-Decision and Order" (93-CV-894 FJS-GJD, Hon. Frederick J. Scullin, Jr., U.S.D.J.) (Dkt #79) (A.36-40), entered on November 19, 1996, of the United States District Court for the Northern District of New York. (Reconsideration denial, and striking and returning of the reply affidavit).

(J) The "Document Rejection Notice" (93-CV-894 FJS-GJD, Hon. Frederick J. Scullin, Jr., U.S.D.J.) (Dkt #80) (A.41), entered on November 21, 1996, of the United States District Court for the Northern District of New York. (Denial, rejection, and returning of the first supplemental reply affidavit).

(K) The "Memorandum-Decision and Order" (93-CV-894 FJS-GJD, Hon. Frederick J. Scullin, Jr., U.S.D.J.) (Dkt #87) (A.42-47), entered on December 27, 1996, of the United States District Court for the Northern District of New York. (Denial, but seal-refiling? the reply affidavit? and the supplemental reply affidavit?).

2. JURISDICTION

The United States Court of Appeals for the Second Circuit entered on December 1, 1999 the "ORDER (summary order)" (No. 99-7008) (A.1-4).

Dr. Wee and Mrs. Wee had timely filed on December 14, 1999 "the Petition for Panel Rehearing" dated December 10, 1999 (No. 99-7008).

The United States Court of Appeals for the Second Circuit entered on February 9, 2000 the "ORDER" (No. 99-7008) (A.92-93), denying the Petition for Panel Rehearing.

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. Section 1254(1).

3. CONSTITUTIONAL AND STATUTORY PROVISIONS, AND RULES AND REGULATIONS INVOLVED

(1) The Federal Rules of Civil Procedure Rule 60(b). (at A.94-95). Relief from Judgment or Order.

The full text of the Federal Rules of Civil Procedure Rule 60(b) is reproduced in the Appendix W1 at A.94-95.

(2) The Sherman Act/Clayton Act,
15 U.S.C. Sections 1 and 2, and 15(a);
(3) The Racketeer Influenced and Corrupt Organizations Act,
18 U.S.C. Sections 1951, 1961(1)(B), 1962(b)(c)(d), and 1964(C);
(4) The Civil Rights Acts,
42 U.S.C. Section 1985(3) (NEW CLAIM);
(5A) The Civil Rights Acts, 42 U.S.C. Section 1983;
(5B) The First Constitution Amendment (Freedom of Speech);
(5C) The Fourteenth Constitution Amendment (Due Process of Law);
(following Dr. Wee's recent discovery of the new facts and the new evidence of up to May 28, 1993, Dr. Wee's Last Discovery Date.) (Complaint 3).
(involving the new fraud and the New Defendant #55 Darlene A. Burns, among others.);
(6) Supplemental (Pendent State) Jurisdiction,
28 U.S.C. Section 1367;
(7) Various Pendent New York State Law Statutes and Common Law Claims: Libel and Slander, and Defamation, Compensatory Damages, Economic Injury, Psychological Injury, Punitive Damages, and for Mrs. Wee's loss of consortium.
(8) New York Public Health Law Section 2801-c. (at A.98).
(9) New York Public Health Law Section 2801-b. (at A.96-97).
(10) New York Codes, Rules and Regulations:
10 N.Y.C.R.R. Sections 93.3 and 93.5(b). (at A.97-98).

The full texts of the N.Y. Public Health Law Section 2801-b and Section 2801-c, and 10 N.Y.C.R.R. Sections 93.3 and 93.5(b) are reproduced in the Appendix W2 at A.96-98.

4. STATEMENT OF THE CASE AND FACTS

I. The Nature Of The Case

This case stems from Dr. Wee's sickness (near death) from December 1987 to May 1988 due to the defendants' possible poisoning, followed by the defendants' improper expulsion and foreclosure of Dr. Wee's urology surgical and medical practice on September 21, 1988, followed by the defendants' lengthy post-deprivation improper unilateral corrective actions against Dr. Wee, followed by the defendants' improper practical revocation of Dr. Wee's full urological surgical privileges on June 28, 1990.

The defendants were all connected with the above wrongdoings. The defendants' actions were not the peer review process.

II. The Factual Background

A. Board-Certified Urology Surgeon Specialist Certified By The American Board Of Urology

Dr. Wee and Mrs. Wee were born in Korea and are naturalized citizens of the United States. Dr. Wee received the Doctor of Medicine degree in 1960. Dr. Wee had completed five years of graduate medical education in the United States from September 1964 to June 1969. Dr. Wee had had a private urology medical practice in the State of New York for 18 years from October 1970 to September 1988. Dr. Wee had been the Chief of the Department of Urology at St. Jerome Hospital in Batavia, NY for many years until **he left for Rome, NY for the relocation in August 1987**. Dr. Wee is a duly licensed physician to practice medicine and surgery in the State of New York since February 1970. Dr. Wee is a duly licensed physician to practice medicine and surgery in the State of Vermont since September 1972. Dr. Wee has been a duly board-certified urology surgeon specialist certified by the American Board of Urology since February 1974.

B. Associate Medical Staff And Full Urological Privileges For Two Years (From August 25, 1987 To August 25, 1989)

There had been eight good recommendation letters about Dr. Wee in early 1987, prior to Dr. Wee's arriving at Rome, New York. Dr. Wee was appointed to the Associate Medical Staff and was granted unlimited, unconditional, and full urology surgical and medical privileges for two years at Rome Hospital and Murphy Memorial Hospital on August 25, 1987 by its Board of Managers. (From August 25, 1987 To August 25, 1989) (KA-7).

C. Dr. Wee's Professional And Personal Good Standing, And Absence Of Any Complaint And/Or Any Accusation Of Wrongdoing Against Dr. Wee

Dr. Wee had been in good standing professionally and personally, and there had not been any complaint and/or any accusation of wrongdoing against Dr. Wee. (A.109-110).

Dr. Henry A. Sparks' (Defendant #48, then Medical Director) February 8, 1988 good clinical reference about Dr. Wee (A.107).

Dr. Shuban K. Moza's (Defendant #37, Surgery Dept. Chairman) March 18, 1988 good clinical reference about Dr. Wee (A.107-8).

Dr. Subbarao V. Ramineni's (Internist) March 18, 1988 good recommendation letter about Dr. Wee (A.108-109).

The Committee of Preceptors' [Dr. John B. Ludin (Defendant #33)] three good reports (good assessments) about Dr. Wee: on June 29, 1988, July 26, 1988, and April 28, 1989.

(A) the Fair Hearing Committee's April 6, 1990 unanimous recommendation to the Executive Committee to grant Dr. Wee full urological privileges, (A.99-106), and

(B) the Fair Hearing Committee's Good Report. (A.101-106).

The New York State Office of Professional Medical Conduct had found no evidence to sustain the alleged charge of professional misconduct in reference to the restrictions of Dr. Wee's privileges by Rome-Murphy Hospital. Its December 11, 1993 letter (#SY90-07-1993A) is reprinted hereto in the Appendix L at page (A.57).

The New York State Office of Professional Medical Conduct had found no evidence to sustain the alleged charge of professional medical misconduct in reference to the care provided by Dr. Wee to sixteen patients. (H. Y., R. M., T. K., J. P., Cly. Ch., C. R., Cla. Cu., He. Ca., J. V., Ho. Ce., L. M., F. R., D. W., H. D., A. B., and H. L.: Full Names are in the original paper.)

Its December 27, 1993 letter (#SY90-07-1993A) is reprinted hereto in the Appendix M at page (A.58-59).

D. The Defendants' (1) Harassments, Threats, And Extortion, (2) Improper Expulsion of Dr. Wee, And (3) Improper Foreclosure Of Dr. Wee's Urology Surgical And Medical Practice Without Cause And Without Due Process On September 21, 1988

Dr. Wee had been sick (had almost died) from December 1987 to May 1988 due to the possible poisoning by some of physicians (Defendants) in retaliation. (NEAR DEATH).(Complaint 404-408).

Dr. Henry A. Sparks (Defendant #48, then Medical Director), on September 21, 1988, told Dr. Wee to resign and leave the Rome Hospital immediately, among other things, the contents of which appear at the Complaint 125 and are reprinted at (A.110).

Dr. Henry A. Sparks (Defendant #48, then Medical Director) and competing urologists (Dr. Sakati and Dr. Kwon) told Dr. Wee to send his patients to them, and do very minor Circumcision and Vasectomy only, among other things, the contents of which appear at the Complaint 158 and are reprinted at (A.110-111).

Because of the Defendants' continual illegal harassments, threats, and directives, (1) Dr. Wee has not performed any urology surgery (operation) since December 12, 1989 (practically since September 21, 1988), (FORECLOSURE), and (2) Dr. Wee has not had his private urology surgical and medical practice since December 12, 1989 (practically since September 21, 1988) (FORECLOSURE).

Dr. Wee practically has not been at the defendants Rome Hospital and Murphy Memorial Hospital sinceSeptember 21, 1988.

Dr. Wee had had a temporary employment at 560 miles roundtrip away from home as a general medical physician but not as a urology surgeon specialist from April 25, 1988 to May 10, 1995.

Dr. Wee has not had any medical or any non-medical occupation since May 10, 1995.

E. The Board Of Managers' (1) June 28, 1990 Fake Third And Final Adverse Decision, And (2) Practical Revocation Of Dr. Wee's Full Urological Surgical Privileges

[Twentyone months post-expulsion and post-deprivation]. [Eightythree days following the Fair Hearing Committee's April 6, 1990 Good Report And Good Recommendation].

The Board of Managers (Defendants), on June 28, 1990, took the Controversial and Conspiratorial Third and Final Adverse Decision regarding Dr. Wee (A.112) that Dr. Wee's (#468) privileges be limited to minor surgical procedures such as circumcision and scrotal surgery, but not including oncology among other things, the contents of which appear at the Complaint paragraph 359 and are reprinted hereto in the Appendix U at page (A.112).

The Board of Managers **revoked** Dr. Wee's Full Urological Surgical Privileges **practically**. There would be very few patients, if any, who might need "Circumcision" or "Scrotal Surgery, But Not Including Oncology", in all fifty states of the United States of America, or anywhere in the world. (Complaint 214).

III. The United States Courts Proceedings

There have been the first Civil Action (USDC), the second Civil Action (USDC), the first Appeal (USCA), the Writ (USSC), the Motion-FRCP60(b)(5)(6) (USDC), and the second Appeal (USCA) - in order for Dr. Wee TO SEEK DAMAGES - as follows:

A. The First Civil Action With The United States District Court For The Northern District Of New York (No. 91-CV-716 TJM, Judge Hon. Thomas J. McAvoy, Filed on June 24, 1991),
-Plaintiffs: Dr. John Chong-Hwan Wee and
Mrs. Nancy Young-Ok-Song Wee, Pro Se,
-Defendants: The City of Rome, The Rome Hospital And Murphy Memorial Hospital, and 52 Others.

The 1/30/92 Order (A.60-63), entered on January 31, 1992, reads: "it is hereby ORDERED that the motions by defendants named herein pursuant to Rules 12(b)(1) and 12(b)(6), 12(c) and 12(h)(2) are granted in part as follows:

- Plaintiffs' claims under 42 U.S.C. Section 1983 (Civil Rights Acts), and the First and Fourteenth Amendments to the United States Constitution are dismissed with prejudice as against all the moving defendants.

- The Court reserves decision as to the remaining defendants' motions to dismiss plaintiffs' claims under 15 U.S.C. Sections 1, 2 and 15 (Sherman/Clayton Acts) and 18 U.S.C. Sections 1962 et seq. (RICO). ...". (A.60-63).

The Amended Memorandum-Decision & Order (A.68-75), and Amended Judgment (A.76-77), entered on July 29, 1992, read:

"The Court dismisses without prejudice all remaining federal causes of action [claims under 15 U.S.C. Sections 1, 2 and 15 (Sherman/Clayton Acts) and 18 U.S.C. Sections 1961 et seq. (RICO)], and all pendent state law claims based upon Dr. Wee's failure to exhaust administrative remedy with the New York State Public Health Council." (A.68-75 and A.76-77).

B. The Second Civil Action With The United States District Court For the Northern District of New York (No. 93-CV-894 FJS, Judge Frederick J. Scullin, Jr., Filed on July 6, 1993),

-Plaintiffs: Dr. John Chong-Hwan Wee and Mrs. Nancy Young-Ok-Song Wee, Pro Se,

-Defendants: The Rome Hospital And Murphy Memorial Hospital, Darlene Burns, and 52 Others.

- Difference Between the First and Second Civil Actions:
[Omitted Defendant #1 The City of Rome.]
[Added a New Defendant #55 Darlene Burns.]
[Added a New Claim Under 42 U.S.C. Section 1985(3).]
[Added (Updated) the New Facts and the New Evidence of Up To May 28, 1993, Dr. Wee's Last Discovery Date.]

IN THE SECOND (PRESENT) COMPLAINT, Dr. Wee and Mrs. Wee make claims under:

(1) 15 U.S.C. Sections 1 and 2, and 15(a);

(2) 18 U.S.C. Sections 1951, 1961(1)(B), 1962(b)(c)(d), &

1964(C)
(3) 42 U.S.C. Section 1985(3) (NEW CLAIM);
(4A) 42 U.S.C. Section 1983;
(4B) The First Constitution Amendment (Freedom of Speech);
(4C) The Fourteenth Constitution Amendment (Due Process of Law); (following Dr. Wee's recent discovery of the new facts and the new evidence of up to May 28, 1993, Dr. Wee's Last Discovery Date.)
(involving the new fraud and the New Defendant #55 Darlene Burns, among others.);
(5) Supplemental Jurisdiction, 28 U.S.C. Section 1367;
(6) Various Pendent New York State Law Statutes and Common Law Claims: Libel and Slander, and Defamation, Compensatory Damages, Economic Injury, Psychological Injury, Punitive Damages, and for Mrs. Wee's loss of consortium.

Dr. Wee and Mrs. Wee attempted to file the supplement to the complaint in person and by mail on several occasions without success from January 4, 1994 to August 25, 1994.

At last, Dr. Wee and Mrs. Wee succeeded to file, on August 26, 1994, the Motion for Leave to file the Supplement to the Complaint dated August 11, 1994. (Dkt #56).

However, Magistrate Judge DiBianco issued the Order (Dkt #57) (A.34-35), entered on September 2, 1994, saying that Dr. Wee and Mrs. Wee's motion to file a supplemental complaint is stayed, and will **not** be considered until **after** the District Court's decision on the pending summary judgment motion. (A.34-35).

Dr. Wee and Mrs. Wee filed on April 12, 1995 "the Notice, dated April 10, 1995, of Termination of Dr. John C. Wee's Only Available Temporary Employment from Sunmount Developmental Center, Tupper Lake, New York as of May 10, 1995". (Dkt #64).

By Decision And Order (Dkt #65) (A.17-31), entered on April 15, 1996, the District Court dismissed the complaint, in part, under the doctrine of res judicata [42 U.S.C. Section 1983, and the First and Fourteenth Constitution Amendments against all defendants except Durand, Harper, Sanzone, and **Burns** (**new defendant**)], and under the state action doctrine [15 U.S.C. Sections 1 and 2, and 15(a) against all defendants], and for the plaintiffs' failure to state claims upon which relief could be granted

[42 U.S.C. Section 1985(3) (**NEW CLAIM**) against all defendants, 18 U.S.C. Sections 1951, 1961(1)(B) , 1962(b)(c)(d), and 1964(C) against all defendants, and 42 U.S.C. Section 1983, and the First and Fourteenth Constitution Amendments against Durand, Harper, Sanzone, and **Burns** (**new defendant**)], and declined to exercise supplemental jurisdiction (28 U.S.C. Section 1367 against all defendants) over the various pendent New York state law statutes and common law causes of action: libel and slander, and defamation, compensatory damages, economic injury, psychological injury, punitive damages, and for Mrs. Wee's loss of consortium. The Court also denied as moot Dr. Wee and Mrs. Wee's cross-motion to substitute Steven Buckout, as executor of the Estate of Dr. Linda Murphy, for defendant Dr. Linda Murphy, and denied as moot Dr. Wee and Mrs. Wee's cross-motion for leave to file a supplement to the complaint. (A.17-31).
-Dismissal Judgment (Dkt #66) (A.32-33) was entered on April 17, 1996. (A.32-33).

Dr. Wee then filed the Motion for Reconsideration of the final Decision and Order, and Judgment on April 29, 1996, (Dkt #67).

The Memorandum-Decision and Order (Dkt #79) (A.36-40), entered on November 19, 1996, read:

> "the Court finds that Plaintiffs have not identified ... any new evidence, and the Court further finds that reconsideration is not necessary to correct clear error or to prevent manifest injustice. Therefore, after carefully considering the parties' submissions and the applicable law, it is hereby ORDERED that Plaintiffs' motion for reconsideration is DENIED; and it is further ORDERED that Plaintiffs' motion for leave to file reply papers is also DENIED, and the Clerk of the Court is directed to STRIKE Plaintiff's reply papers from the docket and return them to Plaintiffs." (Dkt #79) (A.39-40).

Dr. Wee personally filed five months earlier on June 17, 1996 the "Reply Affidavit" dated June 14, 1996 (original Dkt #75), and containing the critical facts and evidence, and the falsification and fabrication by the District Court (Scullin, J.), the defendants' attorneys, and the defendants. But the stricken and returned "Reply Affidavit" reveals that the District Court tampered the "Reply Affidavit" (sealed final Dkt #84 without authority?) (Dr. Wee has

kept the original.) and committed the fraud. See below.

Dr. Wee personally submitted on November 19, 1996 the "First Supplemental Reply Affidavit", containing the new evidence, the Order and Memorandum (No. 1413/96) (A.48-54), dated and entered on November 8, 1996, of the Appellate Division for the Fourth Department of the New York State Supreme Court.

Following reading and reviewing it for two days before denying the motion for reconsideration on November 21, 1996 (two days-antedated as November 19, 1996 or four days-antedated as November 17, 1996: dates manipulation), the District Court Judge Scullin denied, rejected, and returned the First Supplemental Reply Affidavit (sealed final Dkt #85 without authority?) (Dr. Wee has kept the original.) by the Document Rejection Notice (Dkt #80) (A.41), dated and entered on November 21, 1996. See below.

Dr. Wee made the "Motion For Settlement Of Record On Appeal", dated December 12, 1996 and filed on December 27, 1996 (sealed Dkt #82 without authority?), pursuant to FRAP Rule 10(e), and Dr. Wee submitted the "Additional Misstatements by the Defendants" dated December 16, 1996 and filed on December 27, 1996 (sealed Dkt #83 without authority?).

That motion was denied by the "Memorandum-Decision and Order" (Dkt #87) (A.42-47), entered on December 27, 1996.

The District Court (Scullin, J.) had removed (had not filed) the above Dr. Wee's papers of Dkt Nos. 75, 82, 83, 84, and 85.

C. First Appeal To The United States Court Of Appeals For The Second Circuit (Amended Notice Of Appeal: Filed on December 6, 1996) (Dkt #81). (USCA Index No. 96-7598 . Hon. Guido Calabresi, Hon. Jose A. Cabranes, and Hon. Fred I. Parker, Circuit Judges).

Dr. Wee and Mrs. Wee appealed the above:
April 15, 1996 Decision And Order (Dkt #65) (A.17-31),
April 17, 1996 Judgment (Dkt #66) (A.32-33),
September 2, 1994 Order (Dkt #57) (A.34-35),
November 19, 1996 Decision and Order (Dkt #79) (A.36-40), and

November 21, 1996 DocumentRejectionNotice(Dkt #80) (A.41), issued by the district court by Amended Notice Of Appeal (Dkt #81), filed with the district court on December 6, 1996.

The Court of Appeals ordered on January 29, 1997 that Dr. Wee and Mrs. Wee's "Motion for Correction of the Numerous Misstatements in the Various Records of the Various Defendants" pursuant to FRAP 10(e) is sent to the panel which will hear the appeal. (A.82-84).

The Court of Appeals ordered on March 21, 1997 that Dr. Wee and Mrs. Wee's "Motion for Correction of the Numerous Misstatements in the Honorable Frederick J. Scullin, Jr.'s Various Records: the April 15, 1996 Decision And Order (Dkt #65) (A...-..)" pursuant to FRAP 10(e) is sent to the panel which will hear the appeal. (A.85-87).

The Court of Appeals issued the "ORDER (summary order)" (No. 96-7598) (A.78-81), entered on August 14, 1997, affirming the Judgment of the United States District Court for the Northern District of New York (Scullin, J.) substantially for the reasons stated by that District Court, and denying Dr. Wee and Mrs. Wee's two motions to correct the "misstatements" in the record on appeal of the various defendants, and in the Honorable Frederick J. Scullin, Jr.'s Various Records: the April 15, 1996 Decision And Order (Dkt #65) (A.17-31). (A.78-81).(See A.82-84 and A.85-87).

Dr. Wee and Mrs. Wee had filed on August 27, 1997 with the Court of Appeals "The Petition For Rehearing With The Suggestion For Rehearing In Banc" dated August 26, 1997.

The Court of Appeals entered on October 7, 1997 the "ORDER" (No. 96-7598) (A.88-89), saying that the panel that decided the appeal considered and denied the said petition for rehearing, and the "Note" saying that no such judge has requested that a vote be taken thereon. (A.88-89).

D. The Course Of The Supreme Court Of The United States Proceedings

Dr. Wee and Mrs. Wee filed on November 12, 1997 with the Supreme Court of the United States the "Petition For Writ Of

Certiorari" (97-6836) and the "Motion For Leave To Proceed In Forma Pauperis" (97-6836).

Dr. Wee and Mrs. Wee filed on January 9, 1998 the Reply Brief (97-6836).

The Supreme Court on January 26, 1998 denied the Motion For Leave To Proceed In Forma Pauperis (97-6836), and ordered to pay the fee required by the Supreme Court Rule 38(a) and to submit a petition in compliance with the Supreme Court Rule 33.1 until February 17, 1998. [118 S.Ct. 878 (1998).].

Dr. Wee and Mrs. Wee filed on February 17, 1998 the Petition For Writ Of Certiorari (97-6836) in compliance with the S.C. Rule 33.1.

The Supreme Court entered on March 9, 1998 the "Order" (A.90) denying the Petition For Writ Of Certiorari (97-6836). [118 S.Ct. 1191 (1998).]. (A.90).

Dr. Wee and Mrs. Wee filed on April 2, 1998 the Petition For Rehearing (97-6836).

The Supreme Court entered on April 27, 1998 the "Order" (A.91) denying the Petition For Rehearing (97-6836). [118 S.Ct. 1576 (1998).]. (A.91).

E. The Motion For Relief From The Decision And Order, And The Judgment, pursuant to the Fed. R. Civ. P. Rule 60(b)(5) and Rule 60(b)(6),
in The Second Civil Action With The United States District Court For the Northern District of New York (No. 93-CV-894 FJS, Judge Frederick J. Scullin, Jr., Filed on July 6, 1993),
-Plaintiffs: Dr. John Chong-Hwan Wee and
Mrs. Nancy Young-Ok-Song Wee, Pro Se,
-Defendants: The Rome Hospital And Murphy Memorial Hospital, Darlene Burns, and 52 Others.

Dr. Wee and Mrs. Wee filed on September 14, 1998 with the District Court below the "Motion for Relief (93-CV-894) (Dkt #90) of all the Plaintiffs and all the Defendants from (A) the Honorable Frederick J. Scullin, Jr.'s final Decision And Order (93-CV-894) (Dkt #65) (A.17-31) dated and filed on April 15, 1996, and (B) the Clerk George A. Ray's final Judgment (93-CV-894) (Dkt #66) (A.32-33) dated and filed on April 17, 1996"

pursuant to the Federal Rules of Civil Procedure (hereinafter "Fed. R. Civ. P.") Rule 60(b)(5) and Rule 60(b)(6).

By the final "Order" (93-CV-894) (Dkt #97) (A.11-16) dated and filed on December 15, 1998, the District Court (Scullin, J.) denied the Motion for Relief from the final Decision And Order and the final Judgment, and disposed of all claims with respect to all parties. (A.11-16).

F. Second Appeal To The United States Court Of Appeals For The Second Circuit (Notice Of Appeal: Filed on December 23, 1998) (Dkt #98). (USCA Index No. 99-7008, Hon. Amalya L. Kearse, Hon. Fred I. Parker, and Hon. Rosemary S. Pooler, Circuit Judges).

Dr. Wee and Mrs. Wee filed with the District Court below on December 23, 1998 the Notice Of Appeal (93-CV-894) (Dkt #98) to the United States Court of Appeals for the Second Circuit from the United States District Judge Honorable Frederick J. Scullin, Jr.'s final Order (93-CV-894) (Dkt #97) (A.11-16) dated and filed on December 15, 1998: of the United States District Court for the Northern District of New York: denying the Motion for Relief from the final Decision And Order and the final Judgment.

The Court of Appeals issued the "ORDER (Summary Order)" (No. 99-7008) (A.1-4), entered on December 1, 1999, affirming the Order of the District Court substantially for the reasons stated in Judges Scullin's Order dated December 15, 1998. (A.1-4).

The Court of Appeals ordered on December 2, 1999 that Dr. Wee and Mrs. Wee's "Cross-Motion for Sanctioning the Defendants' Attorneys and the Defendants", sent to the panel which will hear the appeal, was denied. (A.5-7).

The Court of Appeals ordered on December 2, 1999 that Dr. Wee and Mrs. Wee's "Cross-Motion for Disciplining the Judges and the Defendants' Attorneys", sent to the panel which will hear the appeal, was denied. (A.8-10).

Dr. Wee and Mrs. Wee had filed on December 14, 1999 "the Petition for Panel Rehearing" dated December 10, 1999 (No. 99-7008).

The Court of Appeals entered on February 9, 2000 the "ORDER" (No. 99-7008) (A.92-93), denying the Petition for Panel Rehearing. (A.92-93).

IV. The United States District Court's Jurisdiction

Richard J. Kaleba, (#28, then Chief Executive Officer) notified Dr. Wee on July 7, 1990 of the Board of Managers' June 28, 1990 Third and Final Adverse Decision. (Complaint 316) [0270].

There had been Dr. Wee's recent discovery of the new facts and the new evidence of up to May 28, 1993, involving the new fraud and the New Defendant #55 Darlene Burns. (Complaint 3) [0157].

The Complaint (93-CV-894) was filed on July 6, 1993.

The jurisdiction of the United States District Court for the Northern District of New York was invoked under and was conferred by (1) 42 U.S.C. Section 1983 and 28 U.S.C. Section 1331 - Federal Question, (2) 15 U.S.C. Section 15(a) and 28 U.S.C. Section 1337(a) - Commerce and Antitrust Regulations, (3) 42 U.S.C. Section 1985(3) and 28 U.S.C. Section 1343(a) - Civil Rights and Elective Franchise, (4) 18 U.S.C. Section 1964(C) Civil Remedies, and (5) 28 U.S.C. Section 1367 Supplemental (Pendent State) Jurisdiction.

The United States District Court for the Northern District of New York was designated as the venue of this proceeding on the basis of 28 U.S.C. Section 1391(C). (complaint 4) [0157].

The Motion for Relief from the final Decision And Order, and the final Judgment was filed on September 14, 1998.

The subject matter jurisdiction was proper in the United States District Court for the Northern District of New York pursuant to the Federal Rules of Civil Procedure Rule 60(b)(5) and 60(b)(6).

By the final Order (93-CV-894) (Dkt #97) (A.11-16), dated and filed on December 15, 1998, the District Court (Scullin, J.) denied the Motion for Relief from the Decision And Order and Judgment.

The Notice of Appeal was filed on December 23, 1998.

V. The United States Court Of Appeals' Jurisdiction

The United States Court of Appeals for the Second Circuit has

the jurisdiction under 28 U.S.C. Section 1291 in that the appeal is from the final Order (93-CV-894) (Dkt #97) (A.11-16), dated and filed on December 15, 1998, of the District Court disposing of all claims with respect to all parties.

5. REASONS FOR GRANTING THE WRIT

I. The decision by the state appellate court should reverse or annul the federal court judgment for the application of the Fed. R. Civ. P. Rule 60(b)(5), which provides that "On motion ..., the court may relieve a party ... from a final judgment, order, ... for the following reasons: * * * (5) ... a prior judgment upon which it is based has been reversed or otherwise vacated, * * *", where the District Court sent Dr. Wee to the state agency and there exist the extraordinary and exceptional circumstances.

A. The Granting Of The Plaintiffs' Motion Under The Fed. R. Civ. P. Rule 60(b)(5) Is Warranted.

The Circuit Court stated in its Order (A.1-4) that:

"A decision by a state court does not reverse or annul a federal court judgment." (A.4).

The Fed. R. Civ. P. Rule 60(b)(5) (A.94-95) provides:

"On motion ..., the court may relieve a party ... from a final judgment, order, ... for the following reasons: * * * (5) ... a prior judgment upon which it is based has been reversed or otherwise vacated, * * *"

The decision by the state appellate court should reverse or annul the federal court judgment for the application of the Fed. R. Civ. P. Rule 60(b)(5), where the District Court sent Dr. Wee to the state agency and there exist the extraordinary and exceptional circumstances. See below.

Thus, the granting of the plaintiffs' motion under the Fed. R. Civ. P. Rule 60(b)(5) is warranted. See (A.94-95).

B. The District Court (91-CV-716, McAvoy) Sent Dr. Wee To The New York State Public Health Council.

By the Amended Memorandum-Decision And Order (91-CV-716, McAvoy) (A.68-75), dated July 29, 1992,

(1) "The recent decision of the Second Circuit Court of Appeals in Johnson v. Nyack Hospital, --- F.2d ---, 60 U.S.L.W. 2746, 1992 WL 95997 (2d Cir. 1992), is dispositive of the plaintiffs' remaining causes of action. (A.72). See also (A.70).

(2) The District Court concluded that the plaintiffs' claims under the federal antitrust law and RICO Act were dependent upon a determination by the New York State Public Health Council of whether his privileges were legitimately restricted. (A.74).

(3) Therefore, based upon the doctrine of primary jurisdiction of the administrative remedy with the New York State Public Health Council, and its application by the Second Circuit in Johnson v. Nyack, the District Court **dismissed without prejudice** all remaining federal causes of action (the plaintiffs' claims under the Sherman/Clayton Acts, 15 U.S.C. Sections 1 et seq., and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 et seq.). (A.74-75). See also (A.70).

(4) The District Court also dismissed the plaintiffs' state law claims, saying that the absence of any federal claim defeats the court's pendant jurisdiction over the plaintiffs' state law claims. (A.75).

By the Amended Judgment (91-CV-716, McAvoy), dated July 29, 1992 (A.76-77), the District Court entered the above dismissal.

C. The New York State Public Health Council's Findings And Defective Decision: Subject To Judicial Review.

Dr. Wee exhausted the administrative remedy with the New York State Public Health Council pursuant to the New York State Public Health Law Section 2801-b (A.96-97) and 10 N.Y.C.R.R. 93 (A.97-98).

Karen S. Westervelt's, Executive Secretary, the New York State Public Health Council, March 23, 1993 one page letter (A.55-56), reads as follows:

"At its meeting of February 26, 1993, the Public Health Council

found that appropriate due process (hearing only) had been provided to you and the reasons (whether true or not) stated by the Hospital for the restriction of your clinical privileges were related to standards of patient care, patient welfare, the objectives of the hospital and/or the character and competence of the physician (verbatim of PHL Section 2801-b-1), and did not credit your (Dr. Wee's) complaint (because of lack of jurisdiction)." (A.55-56).

The Public Health Council's Decision violated the provisions of 10 N.Y.C.R.R. Section 93.5(b) by not notifying (writing) of the reasons for not crediting Dr. Wee's complaint. (A.97-98).

Therefore, the Public Health Council's February 26, 1993 Determination, Findings, and Decision are defective.

" ... the agency's (Public Health Council) determination is only a procedural predicate for further judicial proceedings at which the rights of the parties will be ultimately resolved, the administrative ruling is in the truest sense nonfinal for purposes of judicial review." Cohoes Memorial Hospital v. Dept. of Health 424 NYS2d 110 at 114.

The decisions of the Public Health Council are subject to judicial review pursuant to the New York State Public Health Law Section 2801-c (A.98). See also (A.27-28).

D. The First Judicial Review With The New York State Supreme Court In Oneida County (Index No. 90-02783, RJI No. 32-90-1490, Parker, Filed on November 5, 1990).

The 6/23/92 Order And Judgment, entered on July 6, 1992, read: "Petitioner's (Dr. Wee) claim for injunctive relief under Public Health Law Section 2801-c is dismissed without prejudice for Dr. Wee's failure to exhaust administrative remedy with the New York State Public Health Council."

E. The Second Judicial Review With The New York State Supreme Court In Oneida County (Index No. 93-01322, RJI No. 32-93-775, Parker, Filed on June 18, 1993).

The 2/6/95 Order and Judgment, entered on March 20, 1995,

read: "Petitioner's (Dr. Wee) claim for injunctive relief under Public Health Law Section 2801-c is dismissed with prejudice."

F. The District Court (93-CV-894, Scullin) Dismissed The Plaintiffs' Sherman And Clayton Antitrust Acts Claims Based Upon The Decisions Of The New York State Public Health Council And The New York State Supreme Court.

By the Decision And Order (93-CV-894, Scullin) (A.17-31), dated April 15, 1996, the District Court dismissed the plaintiffs' Sherman and Clayton Antitrust Acts claims based upon the decisions of the New York State Public Health Council and the New York State Supreme Court in Oneida County. (A.17-31).

The District Court's Decision And Order (93-CV-894, Scullin) (A.17-31), dated April 15, 1996, reads:

"Sherman And Clayton Acts": "Here, Plaintiff was afforded an opportunity to seek review of: (1) the peer review committee's finding, (2) the three adverse decisions from the Hospital's Board of Managers, (3) an adverse decision from the New York State Public Health Council, and (4) an adverse decision from the New York State Supreme Court in Oneida County. Plaintiff was simply unsuccessful when he appeared before these reviewing bodies." (A.28).

"Thus, both Rome Hospital and Murphy Memorial Hospital, as well as the private defendants in this case, are shielded from antitrust liability under the Parker doctrine for their participation in Dr. Wee's peer review process. Thus, plaintiffs' claims pursuant to the Sherman And Clayton Antitrust Acts must be DISMISSED under the state action doctrine." (A.28).

G. Appeal To The Appellate Division For The Fourth Department Of The New York State Supreme Court

The Order and Memorandum (No. 1413/96) (A.48-54), dated and entered on November 8, 1996,

[Cite as: John Chong-Hwan Wee, M.D., Appellant, v. City of Rome and Rome Hospital and Murphy Memorial Hospital, Respondents. 233 A.D.2d 876,

649 N.Y.S.2d 614 (A.D. 4 Dept. Nov. 8, 1996), 1996 WL 653500 (N.Y.A.D. 4 Dept.).], provides:

"... Plaintiff (Dr. Wee), a physician ..., alleges that the Hospital's stated reasons for restricting his surgical privileges were pretextual. He contends that the true reasons for imposing the restriction was to retaliate against plaintiff for charges he levied against certain physicians and to lesson competition in the field of urology. Those allegations state a cause of action for improper practices within the meaning of Public Health Law Section 2801-b (see, ...). An action pursuant to Public Health Law Section 2801-c to enjoin a hospital from committing an improper practice is the exclusive remedy where, as here, a physician asserts that a hospital has improperly restricted his surgical privileges (see, ...).

...

The court erred, however, in granting that part of the Hospital's motion for summary judgment dismissing the cause of action pursuant to Public Health Law Section 2801-c. Plaintiff raised triable issues of fact in support of his allegations of bad faith and retaliatory and conspiratorial conduct. Moreover, the motion for summary judgment was brought only eight days after issue was joined. Because evidence of bad faith and improper motivation often is within the exclusive possession of the alleged wrongdoer and plaintiff has not had the opportunity to conduct discovery in this action, the motion for summary judgment is premature with respect to the Section 2801-c cause of action (see generally, ...).

Thus, we modify the order and judgment by denying in part the Hospital's motion for summary judgment and reinstating that cause of action and by vacating the award of costs.

Order and judgment unanimously modified on the law and as modified affirmed with costs to plaintiff." at 615. (A.48-54).

The Order and Memorandum (No. 1413/96) [Cited as Wee v.

City of Rome, 233 A.D.2d 876, 649 N.Y.S.2d 614 (A.D. 4 Dept. 1996).], dated and entered on November 8, 1996, of the Appellate Division for the Fourth Department of the New York State Supreme Court minimized (or annulled) the applicability and the authority of (1) the Hospital's Board of Managers' Decisions, (2) the New York State Public Health Council's Decision, and (3) the New York State Supreme Court in Oneida County's Decision, Order And Judgment. (NY PHL Section 2801-b and NY PHL Section 2801-c.). (A.48-54).

II. The District Court Judge Scullin Abused His Discretion By Failing To Disqualify Himself, By Ruling On The Fraud Upon The Court, Misconduct, And Crimes Committed By Him, And In Denying The Plaintiffs' Fed. R. Civ. P. Rule 60(b)(5) and (b)(6) Motion.

A. The Granting Of The Plaintiffs' Motion Under The Fed. R. Civ. P. Rule 60(b)(5) and (b)(6) Is Warranted.

The Circuit Court stated in its Order (A.1-4) that:

"We see no abuse of discretion in the district court's denial of plaintiffs' Rule 60(b) motion." (A.4).

The District Court Judge Scullin abused his discretion by failing to disqualify himself, by ruling on the fraud upon the court, misconduct, and crimes committed by him, and in denying the plaintiffs' Fed. R. Civ. P. Rule 60(b)(5) and (b)(6) motion.

Thus, the granting of the plaintiffs' motion under the Fed. R. Civ. P. Rule 60(b)(5) and (b)(6) is warranted. See (A.94-95).

B. The Granting Of The Plaintiffs' Motion Under The Fed. R. Civ. P. Rule 60(b)(6) Is Warranted.

The Fed. R. Civ. P. Rule 60(b)(6) (A.94-95) provides:

"On motion ..., the court may relieve a party ... from a final judgment, order, ... for the following reasons: * * * (6) any other reason justifying relief from the operation of the judgment.

The District Court Judge Scullin (93-CV-894) committed the

fraud upon the court, misconduct, and crimes. See below.

Thus, the granting of the plaintiffs' motion under the Fed. R. Civ. P. Rule 60(b)(6) is warranted. See (A.94-95).

C. The District Court Judge Scullin's (93-CV-894) Fraud Upon The Court, Misconduct, And Crimes

(1) Extraordinary Circumstances. Bias And Partiality. No Recitation, Address, Utilization, Or Inferences.

The District Court (Scullin, J.) did not utilize (Bias.):

Dr. Henry A. Sparks' (Defendant #48, then Medical Director) February 8, 1988 good clinical reference about Dr. Wee (A.107).

Dr. Shuban K. Moza's (Defendant #37, Surgery Dept. Chairman) March 18, 1988 good clinical reference about Dr. Wee (A.107-8).

Dr. Subbarao V. Ramineni's (Internist) March 18, 1988 good recommendation letter about Dr. Wee (A.108-109).

The District Court (Scullin, J.) did not utilize (Bias.):

The Committee of Preceptors' [Dr. John B. Ludin (Defendant #33)] good reports (good assessments) about Dr. Wee:

(A) "Dr. Wee's Histories and Physical Examinations, etc. were adequate." on June 29, 1988.

(B) "The monitoring of Dr. Wee over the past three months is completed and is considered to be satisfactory." on July 26, 1988.

(C) "There were no adverse or untoward events or effects as could be determined from the charts examined." on April 28, 1989, according to their usual, customary, and normal function.

The District Court (Scullin, J.) did not utilize (Bias.):

(A) the Fair Hearing Committee's April 6, 1990 unanimous recommendation to the Executive Committee to grant Dr. Wee full urological privileges, (A.99-106), and

(B) the Fair Hearing Committee's Good Report. (A.101-106).

The Fair Hearing Committee on April 6, 1990 unanimously recommended to the Executive Committee to grant Dr. John Chong-Hwan Wee, Plaintiff, full urological privileges in the Associate Medical Staff category. (A.99-106).

The Fair Hearing Committee's Report to the Executive Committee on April 6, 1990 stated "Numerous errors have been found in Dr. Charles Lynch's review. (See attached Fair Hearing Committee's Good Report.)" (A.101-106).

The District Court (Scullin, J.) did not utilize Bias.):
The New York State Office of Professional Medical Conduct had found no evidence to sustain the alleged charge of professional misconduct in reference to the restrictions of Dr. Wee's privileges by Rome-Murphy Hospital. Its December 11, 1993 letter (#SY90-07-1993A) is reprinted hereto in the Appendix L at page (A.57).
The New York State Office of Professional Medical Conduct had found no evidence to sustain the alleged charge of professional medical misconduct in reference to the care provided by Dr. Wee to sixteen patients. (H. Y., R. M., T. K., J. P., Cly. Ch., C. R., Cla. Cu., He. Ca., J. V., Ho. Ce., L. M., F. R., D. W., H. D., A. B., and H. L.: Full Names are in the original paper.)
Its December 27, 1993 letter (#SY90-07-1993A) is reprinted hereto in the Appendix M at page (A.58-59).

(2) Extraordinary Circumstances. (Fraud Upon The Court.)
The District Court (Scullin, J.) improperly and fraudulently dismissed Dr. Wee and Mrs. Wee's complaint and all various claims by the final Decision And Order (93-CV-894) (Dkt #65) (A.17-31), dated April 15, 1996. See below.

(3) 42 U.S.C. Section 1983 Claims Under The First Constitution Amendment And The Fourteenth Constitution Amendment Against **DARLENE A. BURNS (New Defendant #55)**

The Complaint paragraph 496(4A)(4B)(4C) (A.113-114) reads:
" ... Dr. Wee renews the claims under ... following recent discovery of the new facts and the new evidence. ... on May 28, 1993. ... Dr. Wee reported to ... about the ... wrongdoings by the Defendants for the **public concerns**. ... harassments and threats ... Unilateral Corrective Actions ... The Defendants, including **Darlene A. Burns (New Defendant #55)**, and their Attorneys retaliated against Dr. Wee for exercising his right of

free speech, guaranteed by the First Constitution Amendment. Dr. Wee claims deprivation of civil rights guarantees to due process and freedom of speech. ... excluded ..." (A.113-114). The whole contents of the Complaint paragraph 496(4A)(4B)(4C) are reprinted hereto in the Appendix Y at pages (A.113-114).

However, the District Court Judge Scullin falsified as follows: "As to plaintiffs' claim against defendant Burns under the First Amendment, the Court finds that there are no allegations in the complaint that defendant Burns prevented plaintiff from exercising his rights under the First Amendment or that defendant Burns retaliated against him for speaking about matters of public concern. ... Thus, plaintiffs' section 1983 claims against defendant Burns for violations of the First Amendment must also be dismissed." (Dkt # 65) (A.24-25).

Dr. Wee has not had urology medical practice since September 21, 1988 nor had any occupation since May 10, 1995. (Dkt #64).

However, the District Court Judge Scullin falsified as follows: "As to defendant Burns, ... plaintiffs fail to state a claim for violation of Dr. Wee's due process rights under the Fourteenth Amendment because plaintiffs have not demonstrated the existence of a property or liberty interest. ... no property interest ... because plaintiff can still practice medicine." (Dkt # 65) (A.24).

(4) 42 U.S.C. Section 1985(3) **(NEW CLAIM)**

The Complaint paragraph 496(3) (A.113) reads as follows: " ... Dr. Wee suffered discrimination, and is injured in his person and deprived of having and exercising rights and privileges ... because the Defendants (...) conspired, **with the intent of discrimination**, for the purpose of depriving, ..., a person [Dr. Wee], and class of persons [Dr. Wee (South Korea-born Physician, ..., Oriental, Yellow Race, Minority ...)] of the equal protection ..., and of equal privileges ... ." (A.113). The whole contents of the Complaint paragraph 496(3) are reprinted hereto in the Appendix Y at pages (A.113).

However, the District Court Judge Scullin falsified as follows:

"... plaintiffs assert that Dr. Wee is Korean, but fail to allege any facts indicating that the defendants in this case intentionally discriminated against him because of his national origin. (Dkt # 65) (A.25). As stated above, Plaintiff also fails to allege facts showing a deprivation of a constitutionally protected property or liberty interest. (Dkt # 65) (A.25)."

"In any event, the lengthy pre-deprivation due process procedures afforded to Dr. Wee through the various hearings and appeals were more than constitutionally sufficient. ... Thus, plaintiffs' claims under 18(42) U.S.C. Section 1985(3) must be dismissed." (Dkt # 65) (A.25).

(5) The Sherman and Clayton Antitrust Acts Claims

See above.

(6) The RICO Act Claims

The District Court Judge Scullin falsified as follows:

"... in this case defendants' alleged conduct consisted of restricting Dr. Wee's clinical privileges in June, 1990. There is no allegation of a threat of "long-term criminal conduct" as required for a RICO claim. (Dkt # 65) (A.29).

Darlene Burns (#55, Acting Administrator) have been filing the various fraudulent and fabricated papers, in order to prevent Dr. Wee from getting his urological surgical privileges back, with:

the New York State Public Health Council,
the New York State Office of Professional Medical Conduct,
the New York State Supreme Court in Oneida County, and
the Appellate Division for the Fourth Department of the New York State Supreme Court.

Rome Hospital and Murphy Memorial Hospital has been a private hospital for many years.

All the Defendants physicians had hospitalized their own private patients by themselves, had taken care of their own private patients by themselves, had billed their own fees for their services to their own patients by themselves, and had been paid for their own fees for their services by their own patients and/or their insurers.

The Defendants are not the "Municipalities" nor their agents.

The Defendants are not the "Government Entities"nor their agents. All the Defendants had acted in their individual and unofficial capacities.

(7) Extraordinary Circumstances. (Fraud On Court.) Injustice, Obstruction Of Evidence And Justice, Fraud, And Misconduct At The Reconsideration Motion.

Dr. Wee filed the Motion for Reconsideration of the final Decision and Order, and Judgment on April 29, 1996. (Dkt #67).

Dr. Wee personally submitted, waited, and, at the Judge Scullin's verbal order granting the "leave to file" five hours later, filed on June 17, 1996 the "Reply Affidavit" dated June 14, 1996 (original Dkt #75), containing the falsification and fabrication by the District Court (Scullin, J.), the defendants' attorneys, and the defendants, and the critical facts and evidence.

Dr. Wee personally submitted on November 19, 1996 the "First Supplemental Reply Affidavit", containing the new evidence, the Order and Memorandum (No. 1413/96) (A.48-54), dated and entered on November 8, 1996, of the Appellate Division for the Fourth Department of the New York State Supreme Court:

Following reading and reviewing it for two days before denying the motion for reconsideration on November 21, 1996 (two days-antedated as November 19, 1996 or four days-antedated as November 17, 1996: dates manipulation),

(A) the District Court Judge Scullin denied, rejected, and returned the First Supplemental Reply Affidavit (sealed final Dkt #85 without authority?) (Dr. Wee has kept the original.) by the Document Rejection Notice (Dkt #80) (A.41), dated and entered on November 21, 1996. (Fraud On Court.).

(B) the District Court Judge Scullin denied the Motion for Reconsideration, and denied, struck, and returned the duly filed Reply Affidavit (original Dkt #75), by the Memorandum-Decision and Order (Dkt #79) (A.36-40), entered on November 19, 1996. (Fraud On Court.):

Dr. Wee personally filed five months earlier on June 17, 1996 the "Reply Affidavit" dated June 14, 1996 (original Dkt #75), but the stricken and returned "Reply Affidavit" reveals that the District Court tampered the "Reply Affidavit" by erasing the document

#"75" inside the circle, by erasing "FILED June 17, 1996" and "JMW", and by stamping and 5 mos.-antedating "received June 17, 1996" over the original stamping. (sealed final Dkt #84 without authority?) (Dr. Wee has kept the original.)

(C) Dr. Wee received the above two orders simultaneously in the same envelope date-stamped as November 21, 1996.

Dr. Wee made the "Motion For Settlement Of Record On Appeal", dated December 12, 1996 and filed on December 27, 1996 (sealed Dkt #82 without authority?), pursuant to FRAP Rule 10(e), and Dr. Wee submitted the "Additional Misstatements by the Defendants" dated December 16, 1996 and filed on December 27, 1996 (sealed Dkt #83 without authority?).
That motion was denied by the "Memorandum-Decision and Order" (Dkt #87) (A.42-47), entered on December 27, 1996.

(D) The District Court (Scullin, J.) had removed (had not filed) the above Dr. Wee's papers of Dkt Nos. 75, 82, 83, 84, and 85.

D. The District Court Judge Scullin's (93-CV-894)
(1) Ruling On The Fraud Upon The Court, Misconduct, And Crimes Committed By Him, And
(2) Denying The Plaintiffs' Fed. R. Civ. P. Rule 60(b)(5) and (b)(6) Motion

The District Court Judge Scullin ruled on the fraud upon the court, misconduct, and crimes committed by him, and denied the plaintiffs' Fed. R. Civ. P. Rule 60(b)(5) and (b)(6) Motion for Relief from the Decision And Order, and the Judgment, by the Order (93-CV-894)(Dkt #97) (A.11-16) dated December 15, 1998.

The Order (93-CV-894, Scullin J.) (Dkt #97) (A.11-16), dated December 15, 1998 (and Dr. Wee's response) state as follows:

(A) "... the present application is timely. ." (A.15).
Response: No time limitation for fraud upon the court.
(B) "... plaintiffs have not established any of the factors set forth in Rule 60(b) relative to their motion seeking relief

from judgment." (A.15).

Response: Fed. R. Civ. P. Rule 60(b)(5) and (b)(6).

(C) "... this action was dismissed over two and one-half (2-1/2) years ago ..." (A.15).

Response: The FRCP Rule 60(b) 9/14/98 Motion was filed 2 years 4 months 28 days after the USDC 4/17/96 Judgment, 1 year 1 month after the USCA 8/14/97 Order, and 6 months 5 days after the USSC 3/9/98 Order. Fear of Life.

(D) "... a dismissal that was thereafter reviewed by way of a post-judgment motion made to the District Court (Dkt 67), ..." (A.15).

Response: Abuse of discretion. Judge Scullin ruled on the fraud upon the court, misconduct, and crimes committed by him.

(E) "... a dismissal that was thereafter reviewed on appeal (Dkt 89)." (A.15).

Response: Misstatements not corrected. The Court of Appeals denied Dr. Wee's two motions to correct the "misstatements" in the record on appeal of the various defendants, and in the Judge Scullin's Various Records: the April 15, 1996 Decision And Order (Dkt #65) (A.17-31). (A.78-81).(See A.82-84 and A.85-87).

(F) "... plaintiffs have fully and completely litigated the propriety of the dismissal of their action, without success." (A.15).

Response: Partially and incompletely litigated. See above.

(G) "Dr. Wee and Mrs. Wee have submitted nothing in their present submissions indicating that the dismissal of their action was in any way erroneous." (A.15).

Response: See Dr. Wee's Petition for Writ of Certiorari.

(H) "Therefore, their request for relief from the April 1996 judgment is denied." ... "... it is hereby ORDERED, that plaintiffs' motion for relief from the April 1996 judgment (Dkt 90) is denied, ..." (A.15).

Response: Bias, Prejudice, Impropriety, Fraud On The Court.

III. Plaintiffs Did Show Changed Circumstances Warranting The Judgment Vacatur, Where The Judgment That Is The Subject Of Plaintiffs' Motion Under Fed. R. Civ. P. Rule 60(b) Was Affirmed By The Circuit Court.

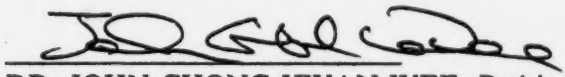
Plaintiffs did show changed circumstances warranting the judgment vacatur, where the judgment that is the subject of plaintiffs' motion under Fed. R. Civ. P. Rule 60(b) was affirmed by the Circuit Court.

6. CONCLUSION

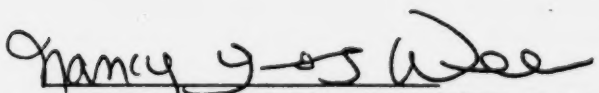
Dr. Wee and Mrs. Wee respectfully request that the Supreme Court of the United States **reverse**
the Second Circuit Court's "ORDER (summary order)" (99-7008) (A.1-4), entered on December 1, 1999, affirming the District Court's (Scullin, J.) Order (93-CV-894) (Dkt #97) dated December 15, 1998, and
the District Court's (Scullin, J.) Order (93-CV-894) (Dkt #97) (A.11-16) dated December 15, 1998, denying the Fed. R. Civ. P. Rule 60(b)(5) and 60(b)(6) Motion for Relief from the Decision And Order, and the Judgment, and **set aside**
the District Court's (Scullin, J.) Decision And Order (93-CV-894) (Dkt #65) (A.17-31) dated April 15, 1996, and Judgment (93-CV-894) (Dkt #66) (A.32-33) dated April 17, 1996, dismissing the Complaint.

For the reasons stated above, this Court should grant this "Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit".

Respectfully submitted,



DR. JOHN CHONG-HWAN WEE, Petitioner,



NANCY YOUNG-OK-SONG WEE, Petitioner #2,
1 Belvedere Lane
Batavia, New York 14020
Telephone No.: (H) (716) 343-8304
Attorney for Petitioners: Pro Se
Date: May 1, 2000

APPENDICES

APPENDIX A

Summary Order of the United States Court of Appeals, Filed December 1, 1999.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

S U M M A R Y O R D E R

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 1st day of December one thousand nine hundred and ninety-nine.

PRESENT:

HONORABLE AMALYA L. KEARSE,
HONORABLE FRED I. PARKER,
HONORABLE ROSEMARY S. POOLER,
Circuit Judges.

UNITED STATES COURT OF APPEALS
FILED
DEC 1, 1999
KAREN GREVE MILTON, ACTING CLERK
SECOND CIRCUIT

No. 99-7008

DR. JOHN CHONG-HWAN WEE,
MRS. NANCY YOUNG-OK-SONG WEE,
Plaintiffs-Appellants,

vs.

ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL, the Board of Managers, the Medical Liaison Committee, the Executive Committee, the Credentials Committee, the Committee of Preceptors, the Appellate Review Committee, the Surgical Audit Committee, Medical Directors, Chief Executive Officers, JOHN ANDREWS, GLORIA BEAN, DR. JOSEPH J. BLAKELY, LUIGI BOTTINI, JOHN R. BRATGE, DR. CHARLES M. BROWN, DR. LAWRENCE M. BURGREEN, EDWARD CALLAHAN, DR. CHAU-FANG CHEN, DR. CHOWDARY CHIRUMAMILLA, DR. BARBARA A. CONNOR, CHARLES P. CONOLE, EMILIO D'ARGENIO, DR. JAMES D. DUNDA, BARBARA A. DURAND, RICHARD FIORINI, DR. PAUL G. FULLER, JR., DR. RICHARD G. GOODIN, JOHN A. GORMAN, DR. LAWRENCE M. GLANTZ, MICHAEL HAYDUK, DR. NEVILLE W. HARPER, DR. WILLIAM HARTNAGEL, KIRK B. HINMAN, DR. JAMES E. JENKS, RICHARD J. KALEBA, CAMILLE T. KAHLER, DR. ROBERT G. KOCH, DR. YOUNG B. KWON, DR. GEORGE LIM, DR. JOHN B. LUDIN, DR. CHARLES H. LYNCH, SAMUAL MADONIA, NANCY MCNAMARA, DR. SHUBAN K. MOZA, Dr., LINDA MURPHY, DR. CHESTER L. PATRICK, JR., DAVID J. RAPKE, ESQ., EDWARD REYNOLDS, RAYMOND ROLEWICZ, DR. ISAM A. SAKATI, PHILIP J. SANZONE, ESQ., RONALD SHAMMA, DR. HERBERT L. SKOGLAND, DR. BRUCE C. SLAGLE, DR. HENRY A. SPARKS, GRETCHEN SPROCK, VICTORIA STEVENS, DR. ARTHUR M. STOCKMAN, DR. PAUL TEMPLE, DR. LOUIS H. VAN SLYKE, CROUSE IRVING MEMORIAL HOSPITAL, DARLENE BURNS,
Defendants-Appellees.

Appearing for Appellants:	John Chong-Hwan Wee, Nancy Young-Ok-Song Wee, *pro sese*, Batavia, N.Y.
Appearing for Appellees Rome Hospital *et al.*:	Jordy Rabinowitz, Garfunkel, Wild & Travis, Great Neck, N.Y.
Appearing for Appellees Brown *et al.*:	Mark L. Dunn, Martin Ganotis, Brown, Mould & Currie, DeWitt, N.Y.
Appearing for Appellees Connor and Patrick:	Karen R. Kaczmarski, Saperston & Day, Buffalo, N.Y.
Appearing for Appellees Durand, *et al.*:	Philip J. Sanzone, Rome, N.Y.
Appearing for Appellee Gorman:	Michael J. Hutter, Thuillez, Ford, Gold & Johnson, Albany, N.Y.

Appeal from the United States District Court for the Northern District of New York.

This cause came on to be heard on the record from the United States District Court for the Northern District of New York, and was argued by plaintiff John Chong-Hwan Wee, *pro se*; submitted by plaintiff Nancy Young-Ok-Song Wee *pro se*; argued by counsel for defendants Rome Hospital And Murphy Memorial Hospital, *et al.*, and defendants Brown *et al.*; and submitted by counsel for other defendants.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed substantially for the reasons stated in Judge Scullin's Order dated December 15, 1998. The judgment that is the subject of plaintiffs' motion under Fed. R. Civ. P. 60(b) was affirmed by this Court, and plaintiffs did not show changed circumstances warranting its vacatur. A decision by a state court does not reverse or annul a federal court judgment. We see no abuse of discretion in the district court's denial of plaintiffs' Rule 60(b) motion.

Nor is there merit in plaintiffs' challenges to prior orders of this Court denying leave to file a supplemental brief, and we decline to disturb those orders.

We have considered all of plaintiffs' contentions on this appeal and have found them to be frivolous. Appellants are warned that further frivolous filings may lead to the imposition of sanctions against them or an injunction barring them from filing further actions in this Court without permission. *See In re Martin-Trigona*, 9 F.3d 226 (2d Cir. 1993).

The order of the district court is affirmed.

FOR THE COURT:
KAREN GREVE MILTON, *Acting Clerk*
by: s/ LUCILLE CARR
Lucille Carr

APPENDIX B1

Order of the United States Court of Appeals, Filed December 2, 1999.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Each motion should be accompanied by a supporting affidavit with statement of issues.
(Local Rule 27(a))
Include brief statement of facts with page references to the moving papers.

99-7008
Docket Number

MOTION INFORMATION FORM
for Sanctioning the Defendants' Attorneys and the Defendants

Wee V Rome & Murphy

Docket No. 99 - 70
Use short title

UNITED STATES COURT OF APPEALS
FILED
MAY 20 1999
KAREN GREVE MILTON, ACTING CLERK
SECOND CIRCUIT

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case) Pro Se*

Dr. John Chong-Hwan Wee and
Mrs. Nancy Young-Ok-Song Wee
1 Belvedere Lane
Batavia, New York 14020
Pro Se: (716) 343-8304

OPPOSING COUNSEL: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

(516) 393-2200
Leonard M. Rosenberg, Esq.,
Garfunkel, Wild & Travis, P.C.,
111 Great Neck Road,
Great Neck, New York 11021

Has consent of opposing counsel:

A. been sought?	[ ] Yes	[x] No
B. been obtained?	[ ] Yes	[x] No
Has service been effected?	[x] Yes	[ ] No
Is oral argument desired?	[ ] Yes	[x] No
(Substantive motions only)		
Requested return date:		
(See Second Circuit Rule 27(b).)		
Has argument date of appeal been set:		
A. by scheduling order?	[x] Yes	[ ] No
B. by firm date/argument notice?	[ ] Yes	[x] No
C. If yes, enter date: The Week of June 7, 1999		

Judge or agency whose order is being appealed:
Judge: Frederick J. Scullin. DC: N.D.N.Y.
DC Dkt: 93-CV-894

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? *(See F.R.A.P. Rule 8.)*	[ ] Yes	[ ] No
Any previous request for similar relief made to the 2nd Circuit?	[ ] Yes	[ ] No
Would expedited appeal eliminate need for this motion?	[ ] Yes	[ ] No
If no, explain why not:		
Will the parties agree to maintain the status quo until the motion is heard?	[ ] Yes	[ ] No

Brief statement of the relief requested: "granting Dr. Wee and Mrs. Wee's Motion for Sanctioning the Defendants' Attorneys and the Defendants", and "granting such other and further relief as this Court may deem just and proper" requested.

s/ JOHN CHONG-HWAN WEE
By: *(Signature of Attorney)*
Signed name must be printed beneath.
Dr. John Chong-Hwan Wee
Date: May 17, 1999

Pro Se Dr. John Chong-Hwan Wee
Appearing for: *(Name of Party)*
Appellant or Petitioner: [x] Plaintiff [ ] Defendant
Appellee or Respondent: [ ] Plaintiff [ ] Defendant

ORDER

BEFORE:

IT IS HEREBY ORDERED that the motion be and it hereby is ~~granted~~ (denied.)

FOR THE COURT
s/ Ana Vargas
By: Ana Vargas
Calendar Deputy Clerk

12-2-99
Date

UNITED STATES COURT OF APPEALS
FILED
DEC - 2 1999
KAREN GREVE MILTON, ACTING CLERK
SECOND CIRCUIT

APPENDIX B2

Order of the United States Court of Appeals, Filed December 2, 1999.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Each motion should be accompanied by a supporting affidavit with statement of issues.
(Local Rule 27(a))
Include brief statement of facts with page references to the moving papers.

99-7008
Docket Number

MOTION INFORMATION FORM
Motion for Disciplining the Judges and Defendants' Attorneys

Wee V Rome & Murphy Hosp.

Docket No. 99 - 7008
Use short title

UNITED STATES COURT OF APPEALS
FILED
MAY 18 1999
KAREN GREVE MILTON, ACTING CLERK
SECOND CIRCUIT

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Pro Se
Dr. John Chong-Hwan Wee and
Mrs. Nancy Young-Ok-Song Wee
1 Belvedere Lane
Batavia, New York 14020
Pro Se: (716) 343-8304

OPPOSING COUNSEL: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

(516) 393-2200
Leonard M. Rosenberg, Esq.,
Garfunkel, Wild & Travis, P.C.,
111 Great Neck Road,
Great Neck, New York 11021

Has consent of opposing counsel:

A. been sought?	[-] Yes	[x] No
B. been obtained?	[ ] Yes	[x] No
Has service been effected?	[x] Yes	[ ] No
Is oral argument desired?	[ ] Yes	[x] No

(Substantive motions only)

Requested return date:
(See Second Circuit Rule 27(b).)

Has argument date of appeal been set:

A. by scheduling order?	[x] Yes	[ ] No
B. by firm date/argument notice?	[ ] Yes	[x] No

C. If yes, enter date: The Week of June 7, 1999

Judge or agency whose order is being appealed:
Judge: Frederick J. Scullin. DC: N.D.N.Y.
DC Dkt: 93-CV-894

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? *(See F.R.A.P. Rule 8.)*	[ ] Yes	[ ] No
Any previous request for similar relief made to the 2nd Circuit?	[ ] Yes	[ ] No
Would expedited appeal eliminate need for this motion?	[ ] Yes	[ ] No

If no, explain why not:

Will the parties agree to maintain the status quo until the motion is heard?	[ ] Yes	[ ] No

Brief statement of the relief requested:
"granting Dr. Wee and Mrs. Wee's Motion for Disciplining the Judges and Defendants' Attorneys" requested.

s/ JOHN CHONG-HWAN WEE
By: *(Signature of Attorney)*
Signed name must be printed beneath.
Dr. John Chong-Hwan Wee
Date: May 17, 1999

Pro Se Dr. John Chong-Hwan Wee
Appearing for: *(Name of Party)*
Appellant or Petitioner: [x] Plaintiff [ ] Defendant
Appellee or Respondent: [ ] Plaintiff [ ] Defendant

ORDER

BEFORE:

IT IS HEREBY ORDERED that the motion be and it hereby is ~~granted~~ (denied.)

FOR THE COURT
s/ Ana Vargas
By: Ana Vargas
Calendar Deputy Clerk

12-2-99
Date

UNITED STATES COURT OF APPEALS
FILED
DEC - 2 1999
KAREN GREVE MILTON, ACTING CLERK
SECOND CIRCUIT

APPENDIX C

Final Order of the United States District Court, Filed December 15, 1998.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
U.S. DISTRICT COURT—N.D. OF N.Y.
FILED
DEC 15 1998
AT _____ O'CLOCK JMB
LAWRENCE K. BAERMAN, CLERK—SYRACUSE

5:93-CV-894
(FJS)(GJD)

DR. JOHN CHONG-HWAN WEE and
NANCY YOUNG-OK-SONG WEE,

Plaintiffs,

-v.-

JOHN ANDREWS; GLORIA BEAN; JOSEPH H. BLAKELY, DR.; LUIGI BOTTINI; JOHN R. BRATGE; CHARLES M. BROWN, M.D.; LAWRENCE M. BURGREEN, Dr., *et al.*,

Defendants.

APPEARANCES: OF COUNSEL:

FOR THE PLAINTIFFS:

DR. JOHN CHONG-HWAN WEE
Plaintiff, *pro se*
1 Belvedere Lane
Batavia, NY 14020

NANCY YOUNG-OK-SONG WEE
Plaintiff, *pro se*
1 Belvedere Lane
Batavia, NY 14020

FOR THE DEFENDANTS Andrews, Bean, Blakely, Bottini, Bratge, Callahan, Conole, D'Argenio, Fiorini, Goodin, Hayduk, Hartnagel, Hinman, Kaleba, Kahler, Koch, Lynch, Madonia, McNamara, Rapke, Reynolds, Rolewicz, Shamma, Sparks, Sprock, Stevens, Stockman, Crouse Irving Memorial Hospital, Burns, Rome Hospital and Murphy Memorial Hospital
GARFUNKEL, WILD LAW FIRM
LEONARD M. ROSENBERG, ESQ.
111 Great Neck Road
Great Neck, NY 11021

FOR THE DEFENDANTS Brown, Burgreen, Chen, Chirumamilla, Dunda, Fuller, Glantz, Jenks, Kwon, Lim, Ludin, Moza, Murphy, Sakati, Skogland, Slagle, Temple, and Van Slyke
MARTIN, GANOTIS LAW FIRM
MARK L. DUNN, Esq.
5790 Widewaters Parkway
Dewitt, NY 13214

FOR THE DEFENDANTS Connor and Patrick
SAPERSTEIN, DAY LAW FIRM
THOMAS S. GILL, Esq.
1100 M&T Center
Three Fountain Plaza
Buffalo, NY 14203-1486

FOR THE DEFENDANTS Durand, Harper and Sanzone
OFFICE OF PHILIP J. SANZONE, ESQ.
PHILIP J. SANZONE[1]
409 North Washington Street
Rome, NY 13440

---

[1] Since the commencement of this action, it has come to the attention of the Court that Mr. Sanzone has been disbarred.

FOR THE DEFENDANT Gorman
THUILLEZ, FORD LAW FIRM
DOMINIQUE A. POLLARA, Esq.
90 State Street
Suite 1500
Albany, NY 12207-1715

FREDERICK J. SCULLIN, JR., DISTRICT JUDGE

ORDER

The plaintiffs John Chong-Hwan Wee and Nancy Young-OK-Song Wee ("plaintiff" or "the Wees"), commenced this action by filing a *pro se* complaint on July 6, 1993. *See* docket no. 1. By Order filed April 15, 1996 ("April 1996 order"), the undersigned dismissed plaintiffs' complaint in its entirety for failure to state a claim upon which relief may be granted. *See* docket no. 65. Judgment dismissing this action was filed on April 17, 1996 in accordance with the April 1996 order. ("April 1996 judgment"). *See* docket no. 66. On April 29, 1996, plaintiffs filed a motion seeking reconsideration of the April 1996 order. *See* docket no. 67. Plaintiffs motion for reconsideration was denied by the undersigned by Order filed on November 19, 1996. Docket no. 79. Thereafter, the judgment of dismissal (*see* docket no. 66) was affirmed on appeal by Order and Mandate of the Second Circuit Court of Appeals. *See* docket no. 89. Presently before the Court is plaintiffs' motion for relief from the April 1996 judgment pursuant to Rule 60(b)(5) and (6) of the Federal Rules of Civil Procedure ("Fed.R.Civ.P."). Docket no. 90.

Plaintiffs ask the undersigned to grant them relief from judgment claiming that the judgment of dismissal has been reversed or otherwise vacated. *See* docket no. 90 at ¶5. Specifically, the Wees claim that an Order

issued by the New York State Appellate Division, Fourth Department, "minimized the applicability and the authority of" this Court's April 1996 order and the judgment entered in accordance therewith. *See* docket no. 90 at ¶7. Plaintiffs also argue that they should be relieved from the judgment based upon what the Wees refer to as "extraordinary circumstances" allegedly justifying relief pursuant to Rule 60(b)(6). *Id.* at ¶¶10-45. The "extraordinary circumstances" proferred by the Wees include, *inter alia*, "fraud upon the Court" (*id.* at ¶¶10-35), "bias and partiality" on the part of the District Court in reviewing or failing to review certain evidence submitted by the parties (*id.* at ¶¶36-39), alleged Court error concerning plaintiffs' prior motion for reconsideration (*id.* at ¶¶40-44), and alleged fraud and misconduct by counsel for the defendants (*id.* at ¶45). The defendants oppose plaintiffs' request for relief from judgment as, *inter alia*, untimely, meritless and based upon facts and arguments which have already been reviewed in prior proceedings related to this action, See docket nos. 91, 93 and 94-96.

Rule 60(b) of the Federal Rules of Civil Procedure ("Fed.R.Civ.P.") sets forth the following six grounds upon which relief from judgment can be granted:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed.R.Civ.P. 60(b). Plaintiffs have requested relief pursuant to Rule 60(b)(5) and (6).[2]

In deciding a Rule 60(b) motion, "a court must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality." *Kotlicky v. United States Fidelity & Guar. Co.*, 817 F.2d 6, 9 (2d Cir. 1987). Moreover, all Rule 60(b) motions must be made within a reasonable time. *See* Fed.R.Civ.P. Rule 60(b). Finally, Rule 60(b) motions are left to the sound discretion of the district judge.

Assuming, *arguendo,* that the present application is timely, the undersigned finds, after thoroughly considering the papers submitted by the Wees in support of their request, that plaintiffs have not established any of the factors set forth in Rule 60(b) relative to their motion seeking relief from judgment. Additionally, this action was dismissed over two and one-half (2½) years ago—a dismissal that was thereafter reviewed both by way of a post-judgment motion made to this Court (*see* docket no. 67), as well as on appeal (*see* docket no. 89). Simply put, plaintiffs have fully and completely litigated the propriety of the dismissal of their action, without success. The Wees have submitted nothing in their present submissions indicating that the dismissal of their action was in any way erroneous. Therefore, their request for relief from the April 1996 judgment is denied.

WHEREFORE, in light of the above, it is hereby

ORDERED, that plaintiffs' motion for relief from judgment (docket no. 90) is denied, and it is further

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[2] In light of plaintiffs' *pro se* status, the Court will consider their request as one seeking relief under any of the grounds authorized by Rule 60(b).

ORDERED, that the Clerk of the Court serve a copy of this Order on the parties by regular mail.

IT IS SO ORDERED.

Dated: December 15, 1998
Syracuse, New York

s/ FREDERICK J. SCULLIN, JR.
Frederick J. Scullin, Jr.
U.S. District Judge

APPENDIX D

Final Decision and Order of the United States District Court, Filed April 15, 1996.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
APR 15 1996
AT _____ O'CLOCK _____ M
GEORGE A. RAY, CLERK
SYRACUSE JMW

93-CV-894
(FJS)

DR. JOHN CHONG-HWAN WEE,
MRS. NANCY YOUNG-OK-SONG WEE,
Plaintiffs,

v.

ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL, JOHN ANDREWS, GLORIA BEAN, DR. JOSEPH J. BLAKELY, LUIGI BOTTINI, JOHN R. BRATAGE, DR. CHARLES M. BROWN, DR. LAWRENCE M. BURGREEN, EDWARD CALLAHAN, DR. CHAU-FANG CHEN, DR. CHOWDARY CHIRUMAMILLA, DR. BARBARA A. CONNOR, CHARLES P. CONOLE, EMILIO D'ARGENIO, DR. JAMES D. DUNDA, BARBARA A. DURAND, RICHARD FIORINI, DR. PAUL G. FULLER, JR., DR. RICHARD G. GOODIN, JOHN A. GORMAN, DR. LAWRENCE M. GLANTZ, MICHAEL HAYDUK, DR. NEVILLE W. HARPER, DR. WILLIAM HARTNAGEL, KIRK B. HINMAN, DR. JAMES E. JENKS, RICHARD J. KALEBA,

CAMILLE T. KAHLER, DR. ROBERT G. KOCH, DR. YOUNG B. KWON, DR. GEORGE LIM, DR. JOHN B. LUNDIN, DR. CHARLES H. LYNCH, SAMUEL MADONIA, NANCY McNAMA, DR. SHUBAN K. MOZA, DR. LINDA MURPHY, DR. CHESTER L. PATRICK, JR., DAVID J. RAPKE, ESQ., EDWARD REYNOLDS, RAYMOND ROLEWICZDR. ISAM A. SAKATI, PHILIP J. SANZONE, ESQ., RONALD SHAMMA, DR. HERBERT L. SKOGLAND, DR. BRUCE C. SLAGLE, DR. HENRY A. SPARKS, GRETCHEN SPROCK, VICTORIA STEVENS, DR. ARTHUR M. STOCKMAN, DR. PAUL TEMPLE, DR. LOUIS H. VAN SLYKE, CROUSE IRVING MEMORIAL HOSPITAL, AND DARLENE BURNS,

Defendants.

APPEARANCES: OF COUNSEL:

DR.JOHN CHONG-HWAN WEE
MRS. NANCY YOUNG-OK-SONG WEE
Plaintiffs, *Pro Se*
One Belvedere Lane
Batavia, New York 14020

THUILLEZ, FORD, GOLD & CONOLLY — DOMINIQUE A. POLLARA, ESQ.
90 State Street
Suite 1522
Albany, New York 12207
For Defendant Gorman

GARFUNKEL, WILD & TRAVIS — LEONARD M. ROSENBERG, ESQ.
175 Great Neck Road
Great Neck, New York 11021
For Defendants Rome Hospital

and Murphy Memorial Hospital,
Andrews, Bean, Blakely, Bottini,
Bratge, Callahan, Conole, D'Argenio,
Fiorini, Goodin, Hayduk, Hartnagel,
Hinman, Kaleba, Kahler, Koch,
Lynch, Madonia, McNamara, Rapke,
Reynolds, Rolewicz, Shamma, Sparks,
Sprock, Stevens, StockmanCrouse Irving
Memorial Hospital, and Burns.

SAPERSTON & DAY, P.C. LINDA CALLAHAN LAING, ESQ.
1100 M & T Center THOMAS E. LIPTAK, ESQ.
Three Fountain Plaza
Buffalo, New York 14203-1486
For Defendants Connor
and Patrick.

MARTIN, GANOTIS LAW FIRM MARK L. DUNN, ESQ.
499 South Warren Street
Syracuse, New York 13202
For: Defendant Buckout,
as executor of the estate
of Defendant Murphy; and Defendants
Brown, Burgreen, Chen,
Chirumamilla, Dunda,
Fuller, Glantz, Jenks,
Kwon, Lim, Ludin,
Moza, Sakati, Skogland,
Slagle, Temple, and Van Slyke.

PHILLIP J. SANZONE, ESQ.
409 North Washington St.
Rome, NY 13440-5107
For Defendants Durand,
Harper, and Sanzone.

FREDERICK J. SCULLIN, JR., D.J.:

DECISION AND ORDER

Introduction

Plaintiffs Dr. John Chong-Hwan Wee and Mrs. Nancy Young-Ok-Song Wee, appearing *pro se*, commenced this action against fifty-four defendants on July 6, 1993, alleging claims for violations of: (1) medical staff bylaws; (2) New York State Public Health Law §2805; (3) New York State Education Law §6527; (4) 42 U.S.C. §§1983 & 1985 under the First and Fourteenth Amendments to the United States Constitution; (5) federal antitrust laws, 15 U.S.C. §§1, 2, and 15(a); (6) the Local Government Immunity Act §§34, 35, and 36; (7) the Racketeering Influenced and Corrupt Organization Act, ("RICO"), 18 U.S.C. §§1951, 1961, 1962, and 1964(c), and claims under state law for libel and slander. Mrs. Wee brings a related claim for the loss of consortium she allegedly suffered as a result of the injuries suffered by her husband.

Dr. Wee is a urologist duly licensed to practice medicine in both New York and Vermont. This case stems from a peer review process which resulted in certain limitations of Dr. Wee's staff privileges at Rome Hospital and Murphy Memorial Hospital between March 1987, and November 1990. The defendants were all connected with the peer review process in some way. Rather than attempting to recite all of plaintiffs' specific allegations here, the Court will address them where they are relevant to the Court's analysis.[1]

---

[1] The complaint contains 212 pages long and contains 518 paragraphs. The Court notes that this action could be dismissed for failure to plead a "short and plain statement" of claims pursuant to Rule 8(a) of the Federal Rules of Civil Procedure. *See Usherman v. Stump*, 643 F.2d 715 (10th Cir. 1981) (complaint consisting of 63 pages and nine pages of attachments violated Rule 8(a)).

Procedural Background

This is the second action plaintiffs have commenced in federal court as a result of the peer review process. Plaintiffs' first action alleged that the certain physicians and other individuals participating in the peer review process violated antitrust laws, various civil rights statutes, the civil RICO statute, the Health Care Quality Improvement Act, 42 U.S.C. §§11101-11152, and the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

By Order dated January 30, 1992, Chief Judge Thomas J. McAvoy issued an Order dismissed plaintiffs' claims under the Health Care Quality Improvement Act of 1986 (42 U.S.C. §11101); 42 U.S.C. §§1981, 1982, 1983; and the First, Fifth, Sixth, Eighth, and Fourteenth Amendments as against all the named defendants in this action except defendant Burns, who was not named in the first action.[2]

During the pendency of the case before Chief Judge McAvoy, plaintiffs brought an Article 78 proceeding in New York State Supreme Court in Oneida County seeking a judgment annulling the restriction of his privileges. That action was dismissed by Supreme Court Justice John S. Parker in a decision dated March 24, 1992, and by Order and Judgment on June 23, 1992, for failure to file a complaint with the New York State Public Health Council.

By subsequent Amended Decision and Order dated July 29, 1992, Chief Judge McAvoy dismissed plaintiffs' remaining causes of action under the Sherman and Clayton Antitrust Acts and Civil RICO statutes pursuant to the doctrine of primary jurisdiction, because plaintiffs failed to first proceed before the New York

[2] Counsel representing defendant Burns did not file a motion in this action, but joined the other defendants' motions to dismiss at oral argument.

State Public Health Council. The Court further dismissed all of plaintiffs' state law claims under the Court's discretionary supplementary jurisdiction.

Following the dismissal of federal court action, plaintiffs proceeded with a complaint before the New York State Public Health Council. The Public Health Council reviewed the matter and found that (1) Dr. Wee's clinical privileges had been restricted, (2) due process was afforded Dr. Wee throughout the peer review process, and (3) the reasons stated by the hospitals for the restriction of Dr. Wee's clinical privileges were related to standards of patient care, patient welfare, the objectives of the hospitals, and/or the character and competence of the physician. As a result of these findings, the Public Health Council found Dr. Wee's complaint to be without merit and refused to annul or modify the determination of the peer review process. Thereafter, plaintiffs commenced this second federal action which is based upon the same peer review process which formed the basis of their first federal action.

Presently before the Court are motions to dismiss the complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) by all defendants except defendants Durand, Harper, and Sanzone.[3] Plaintiffs cross-move to substitute Stephen Buckout, executor of the estate of Linda Murphy, for defendant Linda Murphy, and to file a supplement to the complaint pursuant to Rule 15(d).[4]

[3] Defendants Durand, Harper, and Sanzone are the only defendants who did not file motions and did not appear at oral argument of the motions to dismiss.

[4] In addition, Defendants Connor and Patrick, move for judgment on the pleadings pursuant to Rule 12(c); Defendant Gorman moves to dismiss claim as time barred pursuant to Rule 12(b)(1); and defendant Buckout, as Executor of the Estate of Dr. Linda Murphy, moves to dismiss the complaint pursuant to Rules 12(b)(2), 12(b)(4), 12(b)(5), and Rule 25.

Discussion

The Court will first address the motions to dismiss filed by all defendants except defendants Durand, Harper, and Sanzone. When evaluating a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), the Court must "accept as true all the factual allegations in the complaint" and draw all reasonable inferences in favor of the plaintiff. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 113 S. Ct. 1160, 1161 (1993); *Walker v. City of New York*, 974 F.2d 293, 298 (2d Cir. 1992), *cert. denied*, 507 U.S. 961 and *sub nom.* 507 U.S. 972 (1992). The Court must also read the complaint in a light most favorable to the non-movant. *Scheuer v. Rhodes*, 416 U.S. 232, 236, (1974).

"[T]he court should not dismiss the complaint for failure to state a claim 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " *Ricciuti v. New York City Transit Auth.*, 941 F.2d 119, 123 (2d Cir. 1991) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). These principles apply with even greater force where the plaintiff proceeds *pro se*, or where the plaintiff alleges a civil rights violation. *Easton v. Sundram*, 947 F.2d 1011, 1015 (2d Cir. 1991), *cert. denied*, 504 U.S. 911 (1992).

I. Plaintiffs' claims

A. Section 1983

As a preliminary matter, plaintiffs' claims under 42 U.S.C. §1983 for violations of the First and Fourteenth Amendments to the United States Constitution on these same facts were dismissed by this Court, by Order of

Chief Judge Thomas McAvoy dated January 30, 1992. This dismissal operates as an adjudication upon the merits pursuant to Rule 41(d) of the Federal Rules of Civil Procedure. Accordingly, plaintiffs' claims under 42 U.S.C. §1983 alleging violations of the First and Fourteenth Amendments to the Constitution must be dismissed in their entirety as to all defendants except Durand, Harper, Sanzone, and Burns under to the doctrine of res judicata. *See Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1983).[5]

As to defendant Burns, the only defendant not named in the first federal action, the Court also dismisses these claims for the same reasons enumerated by Chief Judge McAvoy in his bench decision on January 13, 1994 in Albany, New York. Specifically, plaintiffs fail to state a claim for violation of Dr. Wee's due process rights under the Fourteenth Amendment because plaintiffs have not demonstrated the existence of a property or liberty interest. As stated by Chief Judge McAvoy, there is no property interest in discretionary hospital privileges because plaintiff can still practice medicine. *See Board of Regents v. Roth*, 408 U.S. 564, 577 (1971).

As to plaintiffs' claim against defendant Burns under the First Amendment, the Court finds that there are no allegations in the complaint that defendant Burns prevented plaintiff from exercising his rights under the First Amendment or that defendant Burns retaliated against him for speaking about matters of public concern. *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968).

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[5] Defendant Gorman argues that plaintiffs' reassertion of these causes of action are frivolous, without basis, and warrant Rule 11 sanctions. Dkt #23 at ¶¶11-12. However, the sanctioning of litigants is a discretionary matter and the Court declines to sanction these *pro se* litigants at this time.

Thus, plaintiffs' section 1983 claims against defendant Burns for violations of the First Amendment must also be dismissed.

B. Section 1985

Reading the complaint broadly, plaintiffs also assert claims for violation of Dr. Wee's rights under 42 U.S.C. §1985. In order to state a claim under 42 U.S.C. §1985, a plaintiff must allege (1) membership in a protected class, (2) a conspiracy to deprive plaintiff of a constitutional right, (3) action with class-based discriminatory intent, and (4) injury. *Gleason v. McBride,* 869 F.2d 688 (2d Cir. 1989).

In the present case, plaintiffs assert that Dr. Wee is Korean, but fail to allege any facts indicating that the defendants in this case intentionally discriminated against him because of his national origin. As stated above, Plaintiff also fails to allege facts showing a deprivation of a constitutionally protected property or liberty interest. In any event, the lengthy pre-deprivation due process procedures afforded to Dr. Wee through the various hearings and appeals were more than constitutionally sufficient. *See, e.g., Carnes v. Parker,* 922 F.2d 1506 (10th Cir. 1991); *Shahawy v. Harrison,* 875 F.2d 1529 (11th Cir. 1989); *Darlak v. Bobear,* 814 F.2d 1055 (5th Cir. 1987); *Lew v. Kona Hosp.,* 754 F.2d 1420 (9th Cir. 1985). Thus, plaintiffs' claims under 18 U.S.C. §1985(3) must be dismissed.

C. Sherman And Clayton Antitrust Act Claims

Plaintiff also alleges that the defendants combined and conspired to restrain trade in violation of the Sherman and Clayton Antitrust Acts. However, defendants claim that they are shielded from liability under the state action doctrine.

The *Parker* doctrine, also known as the state action doctrine, was first articulated in *Parker v. Brown*, 317 U.S. 341 (1943). The doctrine immunizes state action from attack under the federal antitrust laws. Municipalities are immune from antitrust liability under the state action doctrine if they demonstrate that they are engaging in the challenged activity pursuant to a clearly expressed state policy. *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 413 (1978); *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 36 (1985). The state policy must contain an affirmative showing of intent signified by an authorization of the challenged conduct. *Cine 42nd St. Threater Corp. v. Nederlander Org.*, 790 F.,2d 1032, 1043 (2d Cir. 1986). In other words, a municipality must show statutory authority for its anticompetitive conduct, and that the anticompetitive effects of its conduct are a "foreseeable result" of what the statute authorizes. *City of Columbia v. Omni Outdoor Advertising*, 499 U.S. 365 (1991).

Courts have applied these principles to peer review procedures conducted by municipal hospitals. *See Costal Neuro Psychiatric Assoc. v. Onslow Memorial Hospital*, 795 F.2d 340 (4th Cir. 1986); *Marrese v. Interqual Inc.*, 748 F.2d 373 (7th Cir. 1984), *cert. denied*, 472 U.S. 1027 (1985); *Sweeney v. Athens Regional Medical Directors*, 705 F. Supp. 1556 (M.D. Ga. 1989). In addition, *Parker* immunity is granted to private parties if (1) anti-competitive conduct was taken pursuant to a clearly articulated and affirmatively expressed state policy; and (2) the state actively supervises any anti-competitive conduct. *California Retail Liquor Dealer Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 100 (1980).

In this case, plaintiffs concede that Rome Hospital and Murphy Memorial Hospital" constitute a single "municipal hospital" organized under Chapter 128 of the General Municipal Law of the State of New York. *See* Complaint at ¶24. As a hospital operating under Article 28 of the New York State Public Health Law, it must establish and implement a quality assurance program including a process for physician peer review and credentialing. *See* N.Y. Pub. Health Law §2805-j(1); N.Y. Educ. Law §6527; 10 N.Y. Comp. Codes R. & R. §405.4(a)(3). The New York State Department of Health is responsible for developing and administrating the State's hospital policies. The Public Health Council oversees the creation and regulation of hospitals in the state and is responsible for the revocation, limitation or annulment of hospitals. New York Pub. Health Law §2801-a. The relevant rules and regulations are found in the New York Code of Rules and Regulations.[6] *See* N.Y. Comp. Codes R. & Regs., §405 *et seq.*

Specifically, the regulations involving the adoption of hospital bylaws provide for the appointment of members of the medical staff, the method and application of membership, and appointment of the governing body. §§405.2(e)(1), 405.2(e)(3), 405.2(3)(5). The selection of physicians and definitions of their medical privileges are based upon specific criteria. §405.2(e)(3). Moreover, Pub. Health Law §2801-b provides that any aggrieved person may file a claim with the Public Health Council. The Council then conducts a prompt investigation and determines whether there is cause for crediting the complaint. If the Public Health Council credits the complaint, it directs the appropriate body to review its decision. The decisions of the Public Health Council are

[6] For example, §405.2 involves setting minimum hospital standards.

subject to judicial review and constitute prima facie evidence of facts found therein. Public Health Law §2801-c.

In the present case, the challenged peer review process was conducted pursuant to a clearly articulated state policy and specific statutory authority. The laws and regulations concerning hospitals and staff privileges demonstrate that New York State actively supervises the physician peer review process. Here, Plaintiff was afforded an opportunity to seek review of: (1) the peer review committee's finding, (2) the three adverse decisions from the Hospital's Board of Managers, (3) an adverse decision from the New York State Public Health Council, and (4) an adverse decision from the New York State Supreme Court in Oneida County. Plaintiff was simply unsuccessful when he appeared before these reviewing bodies.

Thus, both Rome Hospital and Murphy Memorial Hospital, as well as the private defendants in this case, are shielded from antitrust liability under the *Parker* doctrine for their participation in Dr. Wee's peer review process. Thus, plaintiffs' claims pursuant to the Sherman and Clayton Antitrust Acts must be DISMISSED under the state action doctrine.

D. The RICO Act

Initially, the Court notes that 18 U.S.C. §1961(1)(B) is a definitional section of the RICO Act and provides no cause of action. In order to state a civil claim for damages under the RICO Act, a plaintiff must allege a violation of the substantive RICO statute, 18 U.S.C. §1962, commonly known as "criminal RICO." *Moss v. Morgan Stanley, Inc.*, 719 F.2d 5 (2d Cir. 1983), *cert. denied sub. nom., Moss v. Newman*, 465 U.S. 1025

(1984), Plaintiff must allege that, through the commission of two or more acts constituting a "pattern" of "racketeering activity", a defendant directly or indirectly invests in, or maintains an interest in, or participates in, an "enterprise", the activities of which affect interstate commerce. *See Moss,* 719 F.2d at 17.

The Federal Rules of Civil Procedure require that pleadings contain a "short and plain" statement of the claim sufficient to given notice to the defendant. Fed. R. Civ. P. 8. Fraud, however, must be pled with particularity. Fed. R. Civ. P. 9(b). In addition, plaintiffs alleging civil RICO claims must file a statement pursuant to General Order 34 and Rule 9.2 of the Local Rules of Civil Procedure for the Northern District of New York.

Here, plaintiffs' fail to allege with particularity facts indicating that defendants received any income directly or indirectly from a pattern of racketeering activity or that defendants maintained an enterprise. The pattern requirement has been expressed in terms of a "continuity of activity" or threatening behavior. For example, predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy the continuity requirement. *H.J. Inc. v. Northwestern Bell Tel. Co.,* 492 U.S. 229 (1989). Where a plaintiff fails to allege a continuity of activity, his or her RICO claim must be dismissed. *See West Mountain Sales v. Logan Mfg. Co.,* 718 F. Supp. 1084 (N.D.N.Y. 1989).

Furthermore, in this case defendants' alleged conduct consisted of restricting Dr. Wee's clinical privileges in June, 1990. There is no allegation of a threat of "long-term criminal conduct" as required for a RICO claim. In addition, in order to bring a claim under 18 U.S.C. §1951, a plaintiff must allege that defendant

affected "commerce" by robbery, extortion, or threats of physical violence. There are no such allegations in plaintiffs' complaint.

Finally, plaintiffs admit that the Rome Hospital and Murphy Memorial Hospital is a single "municipal hospital." Municipalities and their agents are not subject to civil RICO claims because government entities are incapable of forming malicious intent. *See Lancaster Community Hospital v. Antelope Valley Medical Center,* 940 F.2d 397 (9th Cir. 1991), *cert. denied,* 502 U.S. 1094 (1992); *In re Citisource, Inc. Sec. Litigation,* 694 F. Supp. 1069, 1080-81 (S.D.N.Y. 1988).

Thus, for all the foregoing reasons, plaintiffs' Civil RICO claims, specifically plaintiffs' claims under 18 U.S.C. §§1951, 1961, 1962 and 1964(c), must be dismissed.

E. Remaining Defendants and Plaintiffs' Claims Under State Law

Although defendants Durand, Harper and Sanzone did not move to dismiss the complaint, the Court finds that plaintiffs claims against these defendants must be dismissed, *sua sponte,* for the reasons stated above. *See Tyler v. Carter,* 151 F.R.D. 537, 540 (S.D.N.Y. 1993), *aff'd,* 41 F.3d 1500 (2d Cir. 1994); *Baker v. Cuomo,* 58 F.3d 814, 818-19 (2d Cir. 1995).

In addition, although district courts retain the discretion entertain state law claims once all federal claims have been dismissed, 28 U.S.C. §1367, "where the federal claims are dismissed before trial ... the state claims should be dismissed as well." *Maric v. St. Agnes Hosp. Corp., et al.,* 65 F.3d 310, 314 (1995), *cert. denied,* 116 S. Ct. 917 (1996) (quoting *United Mine Workers v. Gibbs,* 383 U.S. 715, 726 (1966)). Thus, all of plaintiffs' state law claims must be dismissed.

Therefore, it is hereby

ORDERED that the motions to dismiss the complaint for failure to state a claim by all defendants except defendants Durand, Harper and Sanzone are GRANTED and the complaint is DISMISSED in its entirety against these defendants. It is further

ORDERED that the Court DISMISSES the complaint in its entirety against defendants Durand, Harper and Sanzone, *sua sponte,* for failure to state a claim. It is further

ORDERED that defendant Gorman's motion to dismiss the compliant under the applicable statute of limitations is DENIED as moot. It is further

ORDERED that plaintiffs' cross-motion to substitute Steven Buckout, as executor of the Estate of Dr. Linda Murphy, for defendant Dr. Linda Murphy, is DENIED as moot. Finally, it is further

ORDERED that plaintiffs' cross-motion for leave to file a supplement to the complaint is DENIED as moot.

IT IS SO ORDERED.

Dated: April 15, 1996
Syracuse, New York

s/ FREDERICK J. SCULLIN, JR.
Frederick J. Scullin, Jr.
U.S. District Judge

APPENDIX E

Final Judgment of the United States District Court, Filed April 17, 1996.

United States District Court

Northern District of New York

JUDGMENT IN A CIVIL CASE

U.S. (Illegible)
N.D. OF N.Y.
FILED
APR 17 1996
AT _____ O'CLOCK _____M
GEORGE A. RAY, CLERK
SYRACUSE

DR. JOHN CHONG-HWAN WEE,
MRS. NANCY YOUNG-OK-SONG WEE

V.

ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL, JOHN ANDREWS, GLORIA BEAN, DR. JOSEPH J. BLAKELY, LUIGI BOTTINI, JOHN R. BRATAGE, DR. CHARLES M. BROWN, DR. LAWRENCE M. BURGREEN, EDWARD CALLAHAN, DR. CHAU-FANG CHEN, DR. CHOWDARY CHIRUMAMILLA, DR. BARBARA A. CONNOR, CHARLES P. CONOLE, EMILIO D'ARGENIO, DR. JAMES D. DUNDA, BARBARA A. DURAND, RICHARD FIORINI, DR. PAUL G. FULLER, JR., DR. RICHARD G. GOODIN, JOHN A. GORMAN, DR. LAWRENCE M. GLANTZ, MICHAEL HAYDUK, DR. NEVILLE W. HARPER, DR. WILLIAM HARTNAGEL, KIRK B. HINMAN,

DR. JAMES E. JENKS, RICHARD J. KALEBA, CAMILLE T. KAHLER, DR. ROBERT G. KOCH, DR. YOUNG B. KWON, DR. GEORGE LIM, DR. JOHN B. LUNDIN, DR. CHARLES H. LYNCH, SAMUEL MADONIA, NANCY McNAMA, DR. SHUBAN K. MOZA, DR. LINDA MURPHY, DR. CHESTER L. PATRICK, JR., DAVID J. RAPKE, ESQ., RONALD SHAMMA, DR. HERBERT L. SKOGLAND, DR. BRUCE C. SLAGLE, DR. HENRY A. SPARKS, GRETCHEN SPROCK, VICTORIA STEVENS, DR. ARTHUR M. STOCKMAN, DR. PAUL TEMPLE, DR. LOUIS H. VAN SLYKE, CROUSE IRVING MEMORIAL HOSPITAL and DARLENE BURNS

CASE NUMBER: 93-CV-894 (FJS)

[X] **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that the motions to dismiss the complaint for failure to state a claim are granted, the court sua sponte dismisses the complaint for failure to state a claim as to defts' Durand, Harper and Sanzone is granted, ordered that the remaining motions are moot and the complaint is dismissed in its entirety as to all defendants'.

All of the above pursuant to the order of the Honorable Frederick J. Scullin, Jr., dated the 15th day of April, 1996.

April 17, 1996
DATE

s/ GEORGE A. RAY
CLERK

s/ JOANNE WALKER
(BY) DEPUTY CLERK

APPENDIX F

Order of the United States District Court, Filed September 2, 1994.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DISTRICT
N.D. OF N.Y.
FILED
SEP -2 1994
_____ O'CLOCK _____M
GEORGE A. RAY, CLERK
SYRACUSE

DR. JOHN CHONG-HWAN WEE, and
MRS. NANCY YOUNG-OK-SONG WEE,
Plaintiffs,

vs.

ROME HOSPITAL and MURPHY
MEMORIAL HOSPITAL, *et al.*,
Defendants.

93-CV-894
(J. Scullin)

ORDER

This court has received a motion by the plaintiffs to supplement the complaint. This is a nondispositive motion that is automatically returnable before the undersigned. The motion was ***unauthorized*** since it is the policy of this court to require a telephone conference ***prior*** to filing ***any nondispositive*** motions. No telephone conference was requested or held in the instant case.

Because the above motion was unauthorized, any defendant who has been served with the above mentioned motion ***need not*** respond. Additionally, the undersigned is aware that there is a summary judgment motion pending before Judge Scullin. The court notes that the instant motion is to supplement the complaint, not to amend the original complaint, thus, the supplement will not affect the motion for summary judgment that is pending before Judge Scullin. Thus, this court will order that the motion for leave of court to supplement the complaint be stayed, and the motion will ***not*** be considered until ***after*** the District Court has decided the pending summary judgment motion. At that time, the parties may schedule a telephone conference to discuss the motion.

WHEREFORE, based on the above, it is

ORDERED, that the plaintiff's motion to file a supplemental complaint is stayed, and will not be considered until ***after*** the District Court's decision on the pending summary judgment motion, and it is further

ORDERED, that the Clerk of the Court serve this Order on all parties who have appeared in this action.

s/ G. DiBianco
United States Magistrate Judge

Dated: September 2, 1994
Syracuse, New York

APPENDIX G

Memorandum-Decision and Order of the United States District Court, Filed November 19, 1996.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
NOV 19 1996
AT _____ O'CLOCK _____ M
GEORGE A. RAY, CLERK
SYRACUSE

93-CV-894
(FJS)

DR. JOHN CHONG-HWAN WEE,
MRS. NANCY YOUNG-OK-SONG WEE,
Plaintiffs,

v.

ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL, JOHN ANDREWS, GLORIA BEAN, DR. JOSEPH J. BLAKELY, LUIGI BOTTINI, JOHN R. BRATAGE, DR. CHARLES M. BROWN, DR. LAWRENCE M. BURGREEN, EDWARD CALLAHAN, DR. CHAU-FANG CHEN, DR. CHOWDARY CHIRUMAMILLA, DR. BARBARA A. CONNOR, CHARLES P. CONOLE, EMILIO D'ARGENIO, DR. JAMES D. DUNDA, BARBARA A. DURAND, RICHARD FIORINI, DR. PAUL G. FULLER, JR., DR. RICHARD G. GOODIN, JOHN A. GORMAN, DR. LAWRENCE M. GLANTZ, MICHAEL HAYDUK, DR. NEVILLE W. HARPER, DR. WILLIAM HARTNAGEL, KIRK B. HINMAN,

DR. JAMES E. JENKS, RICHARD J. KALEBA, CAMILLE T. KAHLER, DR. ROBERT G. KOCH, DR. YOUNG B. KWON, DR. GEORGE LIM, DR. JOHN B. LUNDIN, DR. CHARLES H. LYNCH, SAMUEL MADONIA, NANCY McNAMA, DR. SHUBAN K. MOZA, DR. LINDA MURPHY, DR. CHESTER L. PATRICK, JR., DAVID J. RAPKE, ESQ., EDWARD REYNOLDS, RAYMOND ROLEWICZDR. ISAM A. SAKATI, PHILIP J. SANZONE, ESQ., RONALD SHAMMA, DR. HERBERT L. SKOGLAND, DR. BRUCE C. SLAGLE, DR. HENRY A. SPARKS, GRETCHEN SPROCK, VICTORIA STEVENS, DR. ARTHUR M. STOCKMAN, DR. PAUL TEMPLE, DR. LOUIS H. VAN SLYKE, CROUSE IRVING MEMORIAL HOSPITAL, AND DARLENE BURNS,

Defendants.

APPEARANCES: OF COUNSEL:

DR.JOHN CHONG-HWAN WEE
MRS. NANCY YOUNG-OK-SONG WEE
One Belvedere Lane
Batavia, New York 14020
Plaintiffs, *Pro Se*

THUILLEZ, FORD, GOLD & CONOLLY — DOMINIQUE A. POLLARA, ESQ.
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Counsel for Defendant Gorman

GARFUNKEL, WILD & TRAVIS — LEONARD M. ROSENBERG, ESQ.
175 Great Neck Road
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Counsel for Defendants Rome Hospital
and Murphy Memorial Hospital,
Andrews, Bean, Blakely, Bottini,
Bratge, Callahan, Conole, D'Argenio,
Fiorini, Goodin, Hayduk, Hartnagel,
Hinman, Kaleba, Kahler, Koch,
Lynch, Madonia, McNamara, Rapke,
Reynolds, Rolewicz, Shamma, Sparks,
Sprock, Stevens, Stockman, Crouse Irving
Memorial Hospital, and Burns.

SAPERSTON & DAY, P.C. LINDA CALLAHAN LAING, ESQ.
1100 M & T Center
Three Fountain Plaza THOMAS E. LIPTAK, ESQ.
Buffalo, New York 14203-1486
Counsel for Defendants Connor
and Patrick.

MARTIN, GANOTIS LAW FIRM MARK L. DUNN, ESQ.
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Counsel for Defendant Buckout,
as executor of the estate
of Defendant Murphy; and Defendants
Brown, Burgreen, Chen,
Chirumamilla, Dunda,
Fuller, Glantz, Jenks,
Kwon, Lim, Ludin,
Moza, Sakati, Skogland,
Slagle, Temple, and Van Slyke.

PHILLIP J. SANZONE, ESQ.
409 North Washington St.
Rome, NY 13440-5107
Counsel for Defendants Durand,
Harper, and Sanzone.

FREDERICK J. SCULLIN, JR., D.J.:

MEMORANDUM-DECISION AND ORDER

Presently before the Court is Plaintiffs' motion for reconsideration of this Court's April 15, 1996 Decision and Order that dismissed this action in its entirety. Plaintiffs also seek leave to file reply papers in further support of their motion.

Motions for reconsideration are committed to the sound discretion of the district court. *Fulton Cogeneration Assocs. v. Niagra Mohawk Power Corp.*, 199 WL 293245, No. 92-CV-1412 at *1 (citing *McCarthy v. Manson*, 714 F.2d 234, 237 (2d Cir. 1983)). The three grounds justifying reconsideration are: (1) an intervening change in controlling law, (2) the availability of new evidence, and (3) the need to correct a clear error or prevent manifest injustice. *Id.* (citation omitted). "'The Standard for granting a motion for reconsideration is strict in order dissuade repetitive arguments on issues that have already been considered fully by the Court.'" *Id.* (quoting *Ruiz v. Commissioner of Dep't of Transp.*, 687 F. Supp. 888, 890 (S.D.N.Y. 1988).

In support of their motion Plaintiffs merely restate the allegations in their complaint and reargue the issues addressed in the Court's April 16, 1996 Decision and Order. Thus, the Court finds that Plaintiffs have not identified any change in controlling law or any new evidence, and the Court further finds that reconsideration is not necessary to correct clear error or to prevent manifest injustice. Therefore, after carefully considering the parties' submissions and the applicable law, it is hereby

ORDERED that Plaintiffs' motion for reconsideration is DENIED; and it is further

ORDERED that Plaintiffs' motion for leave to file reply papers is also DENIED, and the Clerk of the Court is directed to STRIKE Plaintiff's reply papers from the docket and return them to Plaintiffs.

IT IS SO ORDERED.

Dated: November 19, 1996
Syracuse, New York

s/ FREDERICK J. SCULLIN, JR.
Frederick J. Scullin, Jr.
United States District Judge

APPENDIX H

Document Rejection Notice of the United States District Court, Filed November 21, 1996.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DOCUMENT REJECTION NOTICE

DATE: November 21, 1996

RE: *Dr. John Chong-Hwan Wee, et al vs. Rome Hospital, et al*

CASE NUMBER: *93-CV-894 (FJS)*

PAPERS REJECTED:

Leave of Court to file First Suplemental Reply Affidavit of Dr. John Chong-Hwan Wee and Mrs. Nancy Young-Ok-Song Wee dated 11/19/96.

U.S. DISTRICT COURT
N.D. OF N.Y.
NOV 21 1996
AT _____ O'CLOCK _____M
GEORGE A. RAY, CLERK
SYRACUSE

Please be advised that the enclosed paper(s) in the above-entitled action have been rejected and returned herewith by the Court, for the following reasons(s):

* * *

12. X Other: *Judge Scullin's chambers denied plaintiffs' request for leave to file the First Supplemental Reply Affidavit.*

NOTE: A copy of this notice has been served upon the parties to this action.

APPENDIX I

Memorandum-Decision and Order of the United States District Court, Filed December 27, 1996.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
DEC 27 1996
AT _____ O'CLOCK _____ M
GEORGE A. RAY, CLERK
SYRACUSE JMW

93-CV-894
(FJS)

DR. JOHN CHONG-HWAN WEE,
MRS. NANCY YOUNG-OK-SONG WEE,
Plaintiffs,

v.

ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL, JOHN ANDREWS, GLORIA BEAN, DR. JOSEPH J. BLAKELY, LUIGI BOTTINI, JOHN R. BRATAGE, DR. CHARLES M. BROWN, DR. LAWRENCE M. BURGREEN, EDWARD CALLAHAN, DR. CHAU-FANG CHEN, DR. CHOWDARY CHIRUMAMILLA, DR. BARBARA A. CONNOR, CHARLES P. CONOLE, EMILIO D'ARGENIO, DR. JAMES D. DUNDA, BARBARA A. DURAND, RICHARD FIORINI, DR. PAUL G. FULLER, JR., DR. RICHARD G. GOODIN, JOHN A. GORMAN, DR. LAWRENCE M. GLANTZ, MICHAEL HAYDUK, DR. NEVILLE W. HARPER, DR. WILLIAM HARTNAGEL, KIRK B. HINMAN, DR. JAMES E. JENKS, RICHARD J. KALEBA,

CAMILLE T. KAHLER, DR. ROBERT G. KOCH, DR. YOUNG B. KWON, DR. GEORGE LIM, DR. JOHN B. LUNDIN, DR. CHARLES H. LYNCH, SAMUEL MADONIA, NANCY McNAMA, DR. SHUBAN K. MOZA, DR. LINDA MURPHY, DR. CHESTER L. PATRICK, JR., DAVID J. RAPKE, ESQ., EDWARD REYNOLDS, RAYMOND ROLEWICZDR. ISAM A. SAKATI, PHILIP J. SANZONE, ESQ., RONALD SHAMMA, DR. HERBERT L. SKOGLAND, DR. BRUCE C. SLAGLE, DR. HENRY A. SPARKS, GRETCHEN SPROCK, VICTORIA STEVENS, DR. ARTHUR M. STOCKMAN, DR. PAUL TEMPLE, DR. LOUIS H. VAN SLYKE, CROUSE IRVING MEMORIAL HOSPITAL, AND DARLENE BURNS,

Defendants.

APPEARANCES: OF COUNSEL:

DR. JOHN CHONG-HWAN WEE
MRS. NANCY YOUNG-OK-SONG WEE
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Batavia, New York 14020
Plaintiffs, *Pro Se*

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GARFUNKEL, WILD & TRAVIS — LEONARD M. ROSENBERG, ESQ.
175 Great Neck Road
Great Neck, New York 11021
Counsel for Defendants Rome Hospital
and Murphy Memorial Hospital,

Andrews, Bean, Blakely, Bottini,
Bratge, Callahan, Conole, D'Argenio,
Fiorini, Goodin, Hayduk, Hartnagel,
Hinman, Kaleba, Kahler, Koch,
Lynch, Madonia, McNamara, Rapke,
Reynolds, Rolewicz, Shamma, Sparks,
Sprock, Stevens, Stockman, Crouse Irving
Memorial Hospital, and Burns.

SAPERSTON & DAY, P.C.
1100 M & T Center
Three Fountain Plaza
Buffalo, New York 14203-1486
Counsel for Defendants Connor
and Patrick.

LINDA CALLAHAN LAING, ESQ.
THOMAS E. LIPTAK, ESQ.

MARTIN, GANOTIS LAW FIRM
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Counsel for Defendant Buckout,
as executor of the estate
of Defendant Murphy; and Defendants
Brown, Burgreen, Chen,
Chirumamilla, Dunda,
Fuller, Glantz, Jenks,
Kwon, Lim, Ludin,
Moza, Sakati, Skogland,
Slagle, Temple, and Van Slyke.

MARK L. DUNN, ESQ.

PHILLIP J. SANZONE, ESQ.
409 North Washington St.
Rome, NY 13440-5107
Counsel for Defendants Durand,
Harper, and Sanzone.

FREDERICK J. SCULLIN, JR., D.J.:

MEMORANDUM-DECISION AND ORDER

Introduction

Presently before the Court is Plaintiffs' motion for settlement of the record on appeal pursuant to Rule 10(e) of the Federal Rules of Appellate Procedure. Plaintiffs object to the Court's November 11, 1996 Memorandum-Decision and Order in which the Court: (1) denied Plaintiffs' motion for reconsideration, (2) denied Plaintiffs' motion to file supplemental reply papers, and (3) ordered the Clerk of the Court to strike Plaintiffs' previously filed reply papers from the record.

RELEVANT PROCEDURAL HISTORY

On April 15, 1996 the Court entered a Decision and Order dismissing all of Plaintiffs' claims for failure to state a claim upon which relief can be granted. Judgment dismissing this action was entered April 17, 1996. On April 29, 1996, Plaintiffs filed a motion for reconsideration, and on June 7, 1996, some of the Defendants filed opposition papers. Plaintiffs filed reply papers including an affidavit and memorandum of law on June 17, 1996. On July 1, 1996, the Court received a letter from Counsel for Defendants Rome Hospital & Murphy Memorial Hospital, dated June 27, 1996, in which they argue that the Court should reject Plaintiffs' reply papers on the grounds that they contain confidential patient names and medical information.[1] On November 19, 1996, Plaintiffs sought leave to file supplemental reply papers, and on that same date the Court issued the Memorandum-Decision and Order denying Plaintiffs' motion for reconsideration, denying Plaintiffs' motion to file supplemental reply papers, and ordering the Clerk of the Court to strike Plaintiffs' previously filed reply papers containing the patient

[1] Although this letter was originally placed in the correspondence file and not docketed by the Court, in light of Plaintiffs' present motion, the Court will file and docket the letter at this time.

information. The motion presently before the Court was received on December 13, 1996, but was not filed at that time pursuant to the Court's instructions to the Clerk.

Discussion

Under Rule 10(e), "[i]f any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth." Although Plaintiffs' motion is technically deficient because there does not appear to be a difference of opinion between the parties concerning what occurred in this Court, the Court will interpret Plaintiffs' pro se papers as seeking reconsideration and/or clarification of the Court's November 19, 1996 Memorandum-Decision and Order.

First, the Court notes that Plaintiffs' supplemental reply papers were rejected by the Clerk pursuant to the Court's November 19, 1996 Memorandum-Decision and Order.[2] These supplemental papers were rejected by the Court pursuant to Local Rule 7.1, which states that reply papers may be filed only with leave of the Court and only upon a showing of necessity. No such showing was made, and notwithstanding, the papers were highly cumulative.

Turning to Plaintiff's previously filed reply papers, although not explicitly stated in the Court's November 19, 1996 Memorandum-Decision and Order, the Court ordered the Clerk of the Court to strike the papers from the record because of the confidentiality issues raised by Counsel for Defendants Rome Hospital and Murphy Memorial Hospital.[3] Moreover, a careful review of those

[2] The rejection was effectuated by a Document Rejection Notice issued by the Clerk of the Court on November 21, 1996. (Docket #80).

[3] The Court is concerned with Plaintiffs seeming disregard for patient confidentiality. In fact, Plaintiffs' papers in support of the motion presently before the Court once again list Dr. Wee's former patients by name and disclose details concerning their medical history.

papers revealed that they too were cumulative and vexatious.

Conclusion

Therefore, although the Court finds that the record on appeal accurately reflects what occurred in this Court, in the interest of providing the Court of Appeals with the most complete and accurate record possible, the Court will file *under seal* Plaintiffs' papers in support of the present motion, which include Plaintiffs' stricken reply papers, and the supplemental reply papers rejected by the Court. After carefully considering the papers submitted and the entire file in this matter, it is hereby

ORDERED that Plaintiffs' motion for settlement of the record on appeal and/or for reconsideration of the Court's November 19, 1996 Order is DENIED; however, the Clerk of the Court is directed to file, *under seal*, Plaintiffs' papers in support of this motion.

IT IS SO ORDERED.

Dated: December 27, 1996
Syracuse, New York

s/ FREDERICK J. SCULLIN, JR.
Frederick J. Scullin, Jr.
United States District Judge

APPENDIX J

Order and Memorandum of the Appellate Division Fourth Department, New York State Supreme Court, Entered November 8, 1996.

SUPREME COURT OF THE
STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1413

PRESENT: LAWTON, J. P., FALLON, CALLAHAN, DOERR AND BALIO, JJ.

MATTER OF JOHN CHONG-HWAN WEE, M.D.,
APPELLANT,

V

CITY OF ROME AND ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL,
RESPONDENTS.

John Chong-Hwan Wee, M.D., having appealed to this Court from the order and judgment (one document) of the Supreme Court, entered in the Oneida County Clerk's office on March 20, 1995, and said appeal having been argued by John Chong-Hwan Wee, M.D., appellant, Jordy Rabinowitz of counsel for respondents, and due deliberation having been had thereon,

It is hereby ORDERED that the order and judgment so appealed from be and the same hereby is unanimously modified on the law by denying in part the motion of defendant Rome Hospital and Murphy Memorial Hospital for summary judgment and reinstating the Public Health Law §2801-c cause of action and by vacating the award of costs and as modified the order and judgment is affirmed with costs to plaintiff.

Memorandum that is hereby made a part hereof.

Entered: November 8, 1996 CARL M. DARNALL, Clerk

Supreme Court
APPELLATE DIVISION,
Fourth Judicial Department,
Clerk's Office, Rochester, N.Y.

I, CARL M. DARNALL, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.

IN WITNESS WHEREOF, *I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this* NOV 08 1996

(SEAL)
SUPREME COURT APPELLATE DIVISION
FOURTH DEPARTMENT

s/ CARL M. DARNALL
Clerk.

1413. (Oneida Co.)—MATTER OF JOHN CHONG-HWAN WEE, M.D., APPELLANT, V CITY OF ROME AND ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL, RESPONDENTS.—Order and judgment unanimously modified on the law and as modified affirmed with costs to plaintiff in accordance with the following Memorandum: Supreme Court properly converted this CPLR article 78 proceeding to an action for an injunction pursuant to section 2801-c of the Public Health Law.

Plaintiff, a physician at defendant Rome Hospital and Murphy Memorial Hospital (Hospital), alleges that the Hospital's stated reasons for restricting his surgical privileges were pretextual. He contends that the true reason for imposing the restriction was to retaliate against plaintiff for charges he levied against certain physicians and to lessen competition in the field of urology. Those allegations state a cause of action for improper practices within the meaning of Public Health Law §2801-b (*see, Fried v Straussman*, 41 NY2d 376, 382, *rearg denied* 41 NY2d 1009; *Gelbard v Genesee Hosp.*, 211 AD2d 159, 164, *affd* 87 NY2d 691; *cf., Saha v Record*, 177 AD2d 763, 765). An action pursuant to Public Health Law §2801-c to enjoin a hospital from committing an improper practice is the exclusive remedy where, as here, a physician asserts that a hospital has improperly restricted his surgical privileges (*see, Gelbard v Genesee Hosp., supra*, 211 AD2d at 162; *Harris v Eisenberg*, 199 AD2d 305, 307).

The court also properly granted that part of the Hospital's motion for summary judgment dismissing the cause of action alleging that, in restricting plaintiff's privileges, the Hospital violated its own by-laws and thereby breached its contract with plaintiff. The Hospital

met its initial burden of establishing that it did not breach its contract with plaintiff, and plaintiff failed to raise a triable issue of fact.

The court erred, however, in granting that part of the Hospital's motion for summary judgment dismissing the cause of action pursuant to Public Health Law §2801-c. Plaintiff raised triable issues of fact in support of his allegations of bad faith and retaliatory and conspiratorial conduct. Moreover, the motion for summary judgment was brought only eight days after issue was joined. Because evidence of bad faith and improper motivation often is within the exclusive possession of the alleged wrongdoer and plaintiff has not had the opportunity to conduct discovery in this action, the motion for summary judgment is premature with respect to the section 2801-c cause of action (*see generally, Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 506). Thus, we modify the order and judgment by denying in part the Hospital's motion for summary judgment and reinstating that cause of action and by vacating the award of costs. (Appeal from Order and Judgment of Supreme Court, Oneida County, Parker, J. - Summary Judgment.) PRESENT: LAWTON, J. P., FALLON, CALLAHAN, DOERR AND BALIO, JJ. (Filed Nov. 8, 1996.)

—N.Y.S.2d—
(Cite as: 1996 WL 653500 (N.Y.A.D. 4 Dept.))

Matter of John Chong-Hwan WEE, M.D.,
Appellant,

v.

CITY of Rome and Rome Hospital and
Murphy Memorial Hospital,
Respondents.

No. 1413.

Supreme Court, Appellate Division,
Fourth Department.

Nov. 8, 1996.

(Appeal from Order and Judgment of Supreme Court, Oneida County, Parker, J.—Summary Judgment.)

Before LAWTON, J.P., and FALLON, CALLAHAN, DOERR and BALIO, JJ.

*1 Supreme Court properly converted this CPLR article 78 proceeding to an action for an injunction pursuant to section 2801-c of the Public Health Law. Plaintiff, a physician at defendant Rome Hospital and Murphy Memorial Hospital (Hospital), alleges that the Hospital's stated reasons for restricting his surgical privileges were pretextual. He contends that the true reason for imposing the restriction was to retaliate against plaintiff for charges he levied against certain physicians and to lessen competition in the field of urology. Those allegations state a cause of action for improper practices within the meaning of Public Health Law §2801-b (see, Fried v. Straussman, 41 N.Y.2d 376, 382, 393 N.Y.S.2d 334, 361 N.E.2d 984, rearg. denied 41

N.Y.2d 1009, 395 N.Y.S.2d 1027, 363 N.E.2d 1194; Gelbard v. Genesee Hosp., 211 A.D.2d 159, 164, 626 N.Y.S.2d 894, affd 87 N.Y.2d 691, 642 N.Y.S.2d 178, 664 N.E.2d 1240; cf., Saha v. Record, 177 A.D.2d 763, 765, 575 N.Y.S.2d 986). An action pursuant to Public Health Law §2801-c to enjoin a hospital from committing an improper practice is the exclusive remedy where, as here, a physician asserts that a hospital has improperly restricted his surgical privileges (see, Gelbard v. Genesee Hosp., supra, 211 A.D.2d, at 162, 626 N.Y.S.2d 894; Harris v. Eisenberg, 199 A.D.2d 305, 307, 604 N.Y.S.2d 596).

The court also properly granted that part of the Hospital's motion for summary judgment dismissing the cause of action alleging that, in restricting plaintiff's privileges, the Hospital violated its own by-laws and thereby breached its contract with plaintiff. The Hospital met its initial burden of establishing that it did not breach its contract with plaintiff, and plaintiff failed to raise a triable issue of fact.

The court erred, however, in granting that part of the Hospital's motion for summary judgment dismissing the cause of action pursuant to Public Health Law §2801-c. Plaintiff raised triable issues of fact in support of his allegations of bad faith and retaliatory and conspiratorial conduct. Moreover, the motion for summary judgment was brought only eight days after issue was joined. Because evidence of bad faith and improper motivation often is within the exclusive possession of the alleged wrongdoer and plaintiff has not had the opportunity to conduct discovery in this action, the motion for summary judgment is premature with respect to the section 2801-c cause of action (see generally, Ross v Curtis-Palmer Hydro-Elec. Co., 81

N.Y.2d 494, 506, 601 N.Y.S.2d 49, 618 N.E.2d 82). Thus, we modify the order and judgment by denying in part the Hospital's motion for summary judgment and reinstating that cause of action and by vacating the award of costs.

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APPENDIX K

Findings and Decision of the New York State Public Health Council, Dated March 23, 1993.

PUBLIC HEALTH COUNCIL

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

March 23, 1993

John Chong-Hwan Wee, M.D.
1 Belvedere Lane
Batavia, New York 14020

Re: John Chong-Hwan Wee, M.D. v. Rome Hospital and Murphy Memorial Hospital

Dear Dr. Wee:

At its meeting of February 26, 1993, the Public Health Council considered your complaint against Rome Hospital and Murphy Memorial Hospital which alleged that the Hospital committed improper practices by restricting your clinical privileges.

Findings:

The Council reviewed the material submitted by you and the Rome Hospital and Murphy Memorial Hospital and determined that the Hospital had, in fact, restricted your clinical privileges.

The Council found that you had been advised of the reasons for the restriction of your privileges and that appropriate due process had been provided to you.

The Council found that the reasons stated by the Hospital for the restriction of your clinical privileges were related to standards of patient care, patient welfare, the objectives of the hospital and/or the character and competence of the physician.

Decision:

The Public Health Council did not credit your complaint.

Sincerely,

s/ KAREN S. WESTERVELT
Karen S. Westervelt
Executive Secretary

cc: Ms. Darlene Burns
Leonard Rosenberg, Esq.

APPENDIX L

Findings and Decision of the New York State Office of Professional Medical Conduct, Dated December 11, 1993.

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH
Syracuse Area Office 677 South Salina Street Syracuse, NY 13202
FAX: (315) 426-7725
Mark R. Chassin, M.D.
Commissioner
OFFICE OF HEALTH
SYSTEMS MANAGEMENT
Raymond Sweeney
Director
Norman S. Andrzejewski
Area Administrator

December 11, 1993

John Wee, M.D.
1 Belvedere Lane
Batavia, NY 14020

RE: SY-90-07-1993-A

Dear Dr. Wee:

As required by the State Public Health Law, the office of Professional Medical Conduct has investigated allegations of professional misconduct which were lodged against you in reference to the restrictions of your privileges by Rome-Murphy Hospital. The allegations and the information you provided have been reviewed, and no evidence has been found to sustain a charge of professional misconduct. Our investigation has been discontinued, and the case has been closed.

Because a medical misconduct investigation is not a disciplinary proceeding, we are prohibited by law from providing you, your counsel, or anyone else with further information regarding our inquiry or the source of the allegations. This is done to protect your confidentiality in this matter as well as that of the complainant.

Sincerely,

s/ PAULINE FRAZIER
for Norman Andrzejewski
Area Administrator

APPENDIX M

Findings and Decision of the New York State Office of Professional Medical Conduct, Dated December 27, 1993.

DOH

STATE OF NEW YORK
DEPARTMENT OF HEALTH

Syracuse Area Office 677 South Salina Street Syracuse, NY 13202
FAX: (315) 426-7725

Mark R. Chassin, M.D.
Commissioner

OFFICE OF HEALTH
SYSTEMS MANAGEMENT
Raymond Sweeney
Director
Norman S. Andrzejewski
Area Administrator

December 27, 1993

John Wee, M.D.
1 Belvedere Lane
Batavia, NY 14020

Re: OPMC #SY90-07-1993A

Dear Dr. Wee:

As required by the State Public Health Law, the office of Professional Medical Conduct has investigated allegations of professional medical misconduct lodged against you in reference to the care provided to Herbert Younglove, Richard Martin, Thomas Kryosa, John Pope, Clyde Champlin, Clifford Reed, Clayton Cummings, Henry Casler, Joseph Vaccaro, Howard Cegwin, Luigi Mariani, Francis Richie, Douglas White, Herbert Daniels, Aaron Bolden, and Harry Longo. The allegations and the information you provided have been reviewed with no evidence found to sustain a charge of professional misconduct. Our investigation has been discontinued, and the case is closed.

Because a medical misconduct investigation is not a disciplinary proceeding, we are prohibited from providing you, your counsel, or anyone else with further information regarding our inquiry or the source of the allegations. This is done to protect your confidentiality in this matter as well as that of the complainant.

Sincerely,

s/ JUDY VENNIAU
for Norman Andrzejewski
NORMAN ANDRZEJEWSKI
Area Administrator

NA:sm

APPENDIX N

Order of the United States District Court, Filed January 31, 1992

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.
ORIGINAL FORM
JAN 31 1992
GEORGE A. RAY, CLERK
BINGHAMTON

91-CV-0716

DR. JOHN CHONG-HWAN WEE and
MRS. NANCY YOUNG-OK-SONG WEE,
Plaintiffs,

-against-

THE CITY OF ROME, ROME HOSPITAL and
MURPHY MEMORIAL HOSPITAL, *et al.*,
Defendants.

PRESENT: Hon. Thomas J. McAvoy
District Court Judge

WHEREAS a motion having duly been made by defendants THE CITY OF ROME, ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL, JOHN ANDREWS, GLORIA BEAN, DR. JOSEPH J. BLAKELY, LUIGI BOTTINI, JOHN R. BRATGE, EDWARD CALLAHAN, CHARLES P. CONOLE, EMILIO D'ARGENIO, RICHARD FIORINI, DR. RICHARD G. GOODIN, MICHAEL HAYDUK, DR. WILLIAM HARTNAGEL, KIRK P. HINMAN, RICHARD J. KALEBA, CAMILLE T. KAHLER, DR.

ROBERT G. KOCH, DR. CHARLES H. LYNCH, SAMUEL MADONIA, NANCY MCNAMARA, DAVID J. RAPKE, ESQ., EDWARD REYNOLDS, RAYMOND ROLEWICZ, RONALD SHAMMA, DR. HENRY A. SPARKS, GRETCHEN SPROCK, VICTORIA STEVENS, DR. ARTHUR M. STOCKMAN and CROUSE IRVING MEMORIAL HOSPITAL to dismiss the complaint in the above-entitled action pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure; and

WHEREAS a motion having been duly made by defendants DR. CHARLES M. BROWN, DR. LAWRENCE M. BURGREEN, DR. CHAU-FANG CHEN, DR. CHOWDARY CHIRUMAMILLA, DR. JAMES D. DUNDA, DR. PAUL G. FULLER, JR., DR. LAWRENCE M. GLANTZ, DR. JAMES E. JENKS, DR. YOUNG B. KWON, DR. GEORGE LIM, DR. JOHN B. LUDIN, DR. SHUBAN K. MOZA, DR. LINDA MURPHY, DR. ISAM A. SAKATI, DR. HERBERT L. SKOGLAND, DR. BRUCE C. SLAGLE, DR. PAUL TEMPLE and DR. LOUIS H. VAN SLYKE to dismiss the complaint in the above-entitled action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure; and

WHEREAS a motion having been duly made by defendants DR. BARBARA A. CONNOR and DR. CHESTER L. PATRICK, JR. to dismiss the complaint in the above-entitled action pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure; and

WHEREAS a motion having been duly made by defendant JOHN A. GORMAN to dismiss the complaint in the above-entitled action pursuant to Rules 12(c) and (h)(2) of the Federal Rules of Civil Procedure;

NOW, upon reading and filing of all the papers submitted in support of said motions and in opposition thereto, and due deliberation having been had thereon, and upon the oral argument of plaintiffs and counsel for defendants, heard on January 13, 1992, and pursuant to this Court's ruling from the bench after such argument, it is hereby

ORDERED that the motions by defendants named herein pursuant to Rules 12(b)(1) and (6), (c) and (h)(2) are granted in part as follows:

— The complaint is dismissed in its entirety as against defendant City of Rome in that plaintiffs' federal claims under 15 U.S.C. §§1, 2 and 15 (Sherman/Clayton Acts), 42 U.S.C. §11101 (the Health Care Quality Improvement Act of 1986), 42 U.S.C. §§1981, 1982 and 1983 (Civil Rights Acts), 18 U.S.C. §§1962 *et seq.* (the Racketeer Influenced and Corrupt Organizations Act) and the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution against defendant the City of Rome are dismissed with prejudice, and plaintiffs' pendent state law claims against the City of Rome are dismissed for lack of federal court jurisdiction;

— Plaintiffs' claim under 42 U.S.C. §11101 (the Health Care Quality Improvement Act of 1986) is dismissed with prejudice as against all the moving defendants;

— Plaintiffs' claims under 42 U.S.C. §§1981, 1982 and 1983 (Civil Rights Acts) are dismissed with prejudice as against all the moving defendants; and

— Plaintiffs' claims under the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution are dismissed with prejudice as against all the moving defendants.

The Court reserves decision as to the remaining defendants' motions to dismiss plaintiffs' claims under 15 U.S.C. §1, 2 and 15 (Sherman/Clayton Acts) and 18 U.S.C. §§1962 *et seq.* (RICO); and

IT IS FURTHER ORDERED that by February 28, 1992, plaintiffs shall file with the Court, and serve upon defendants' attorneys, plaintiffs' response to the Court's questionnaire as to the basis for their claim under RICO (18 U.S.C. §§1962 *et seq.*).

Dated: January 30, 1992
~~Binghamton~~, New York
Watertown

s/ THOMAS J. McAVOY
Thomas J. McAvoy
U.S.D.J.

APPENDIX O

Order of the United States District Court, Filed April 29, 1992

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
APR 29 1992
_____ O'CLOCK _____ M.
GEORGE A. RAY, CLERK
BINGHAMTON

91-CV-716

DR. JOHN CHONG-HWAN WEE, and
MRS. NANCY YOUNG-OK-SONG WEE,

Plaintiff,

-against-

(1) THE CITY OF ROME, (2) ROME HOSPITAL and MURPHY MEMORIAL HOSPITAL, THE BOARD OF MANAGERS, THE MEDICAL LIASON COMMITTEE, THE EXECUTIVE COMMITTEE, THE CREDENTIALS COMMITTEE, THE COMMITTEE OF PRECEPTORS, THE APPELLATE REVIEW COMMITTEE, THE SURGICAL AUDIT COMMITTEE, MEDICAL DIRECTORS, and CHIEF EXECUTIVE OFFICERS, (3) JOHN ANDREWS, (4) GLORIA BEAN, (5) DR. JOSEPH BLAKELY, (6) LUIGI BOTTINI, (7) JOHN R. BRATGE, (8) DR. CHARLES M. BROWN, (9) DR. LAWRENCE M. BURGREEN, (10) EDWARD CALLAHAN, (11) DR. CHAU-FANG CHEN, (12) DR.

CHOWDARY CHIRUMAMILLA, (13) DR. BARBERA A. CONNOR, (14) CHARLES P. CONOLE, (15) EMILIO D'ARGENIO, (16) DR. JAMES D. DUNDA, (17) BARBERA A. DURAND, (18) RICHARD FIORINI, (19) DR. PAUL G. FULLER, JR., (20) DR. RICHARD G. GOODIN, (21) JOHN A. GORMAN, (22) DR. LAWRENCE M. GLANTZ, (23) MICHAEL HAYDUK, (24) DR. NEVILLE W. HARPER, (25) DR. WILLIAM HARTNAGEL, (26) KIRK B. HINMAN, (27) DR. JAMES E. JENKS, (28) RICHARD J. KALEBA, (29) CAMILLE T. KAHLER, (30) DR. ROBERT G. KOCH, (31) DR. YOUNG B. KWON, (32) DR. GEORGE LIM, (33) DR. JOHN B. LUDIN, (34) DR. CHARLES H. LYNCH, (35) SAMUEL MADONIA, (36) NANCY McNAMARA, (37) DR. SHUBAN K. MOZA, (38) DR. LINDA MURPHY, (39) DR. CHESTER L. PATRICK, JR., (40) DAVID J. RAPKE, ESQ., (41) EDWARD REYNOLDS, (42) RAYMOND ROLEWICZ, (43) DR. ISAM A. SAKATI, (44) PHILIP J. SANZONE, ESQ., (45) RONALD SHAMMA, (46) DR. HERBERT L. SKOGLAND, (47) DR. BRUCE C. SLAGLE, (48) DR. HENRY A. SPARKS, (49) GRETCHEN SPROCK, (50) VICTORIA STEVENS, (51) DR. ARTHUR M. STOCKMAN, (52) DR. PAUL TEMPLE, (53) DR. LOUIS H. VAN SLYKE, and (54) CROUSE-IRVING MEMORIAL HOSPITAL,

Defendants.

APPEARANCES: OF COUNSEL:

DR. JOHN CHONG-HWAN WEE PRO SE
MRS. NANCY YOUNG-OK-SONG WEE
1 Belvedere Lane
Batavia, New York 14020

MARTIN, GANOTIS LAW FIRM
499 South Warren Street
Syracuse, New York 13202
For Defendants, #8, 9, 11, 12, 16, 19, 22, 27, 31, 32, 33, 37, 38, 43, 46, 47, 51, 52, and 53.

MARK L. DUNN

SAPERSTON, DAY LAW FIRM
One Fountain Plaza
1100 Goldome Center
Buffalo, New York 14203-1486
For Defendants, #13 and 39.

LINDA CALLAHAN LAING
THOMAS E. LIPTAK

GARFUNKEL, WILD & TRAVIS LAW FIRM
175 Great Neck Road
Great Neck, New York 11021
For Defendants, #1-7, 10, 14, 15, 18, 20, 23, 25, 26, 28, 29, 30, 34, 35, 36, 40, 41, 42, 45, 48, 49, 50, 51, and 54.

LEONARD M. ROSENBERG

THUILLEZ, FORD LAW FIRM
90 State Street
Albany, New York 12207
For Defendant #21.

DOMINIQUE A. POLLARA

ORDER

Papers submitted by the plaintiffs on February 6, 1992 entitled "Notice of Reconsideration" are presently before the court. These papers are directed at the court's decision of January 16, 1992 and seek reconsideration of the court's January 30, 1992 order. In rendering its decision on these motions, the court assumed as true all

of the allegations in the plaintiffs' 97 page, 277 paragraph complaint. Indeed, considering the plaintiffs' status as pro se litigants the court read the complaint liberally and construed any ambiguities in their favor. Furthermore, the court similarly considered the plaintiffs' papers in opposition to the defendants' motions, including any allegations contained in the opposition papers which were not covered in the complaint.

The plaintiffs' papers in support of the motion for reconsideration merely reargue the already decided motions, and assert that there exist genuine issues of fact to be considered. The plaintiffs' further contend that the court did not consider critical information contained in the opposition papers. Since the court assumed the truth of all allegations in the complaint as well as the opposition papers, that there may exist questions of fact as to those allegations is of no consequence to the January 13, 1992 decision. Therefore, the court declines to reconsider its decision in this matter.

IT IS SO ORDERED.

Dated at Binghamton,
April 28, 1992

s/ THOMAS J. McAVOY
Thomas J. McAvoy
United States District Judge

APPENDIX P

Amended Memorandum-Decision and Order of the United States District Court, Filed July 29, 1992

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.
ORIGINAL FILED
JUL 29 1992
GEORGE A. RAY, CLERK
BINGHAMTON

91-CV-716

DR. JOHN CHONG-HWAN WEE, and
MRS. NANCY YOUNG-OK-SONG WEE,

Plaintiffs,

-against-

THE CITY OF ROME, ROME HOSPITAL and MURPHY MEMORIAL HOSPITAL, THE BOARD OF MANAGERS, THE MEDICAL LIAISON COMMITTEE, THE EXECUTIVE COMMITTEE, THE CREDENTIALS COMMITTEE, THE COMMITTEE OF PRECEPTORS, THE APPELLATE REVIEW COMMITTEE, THE SURGICAL AUDIT COMMITTEE, MEDICAL DIRECTORS, and CHIEF EXECUTIVE OFFICERS; JOHN ANDREWS, GLORIA BEAN, DR. JOSEPH BLAKELY, LUIGI BOTTINI, JOHN R. BRATGE, DR. CHARLES M. BROWN, DR. LAWRENCE M. BURGREEN, EDWARD CALLAHAN, DR. CHAU-FANG CHEN, DR. CHOWDARY CHIRUMAMILLA, DR. BARBERA A. CONNOR, CHARLES P.

CONOLE, EMILIO D'ARGENIO, DR. JAMES D. DUNDA, BARBERA A. DURAND, RICHARD FIORINI, DR. PAUL G. FULLER, JR., DR. RICHARD G. GOODIN, JOHN A. GORMAN, DR. LAWRENCE M. GLANTZ, MICHAEL HAYDUK, DR. NEVILLE W. HARPER, DR. WILLIAM HARTNAGLE, KIRK B. HINMAN, DR. JAMES E. JENKS, RICHARD J. KALEBA, CAMILLE T. KAHLER, DR. ROBERT G. KOCH, DR. YOUNG B. KWON, DR. CHARLES H. LYNCH, SAMUEL MADONIA, NANCY MCNAMARA, DR. SHUBAN K. MOZA, DR. LINDA MURPHY, DR. CHESTER L. PATRICK, JR., DAVID J. RAPKE, ESQ., EDWARD REYNOLDS, RAYMOND ROLEWICZ, DR. ISAM A. SAKATI, PHILIP J. SANZONE, ESQ., RONALD SHAMMA, DR. HERBERT L. SKOGLAND, DR. BRUCE C. SLAGLE, DR. HENRY A. SPARKS, GRETCHEN SPROCK, VICTORIA STEVENS, DR. ARTHUR M. STOCKMAN, DR. PAUL TEMPLE, DR. LOUIS H. VAN SLYKE, and CROUSE-IRVING MEMORIAL HOSPITAL,

Defendants.

APPEARANCES: OF COUNSEL:

DR. JOHN CHONG-HWAN WEE
MRS. NANCY YOUNG-OK-SONG WEE
1 Belvedere Lane
Batavia, New York 14020
PLAINTIFFS PRO SE

MARTIN, GANOTIS LAW FIRM
499 South Warren Street
Syracuse, New York 13202
MARK L. DUNN

SAPERSTON, DAY LAW FIRM — LINDA CALLAHAN LAING
One Fountain Plaza — THOMAS E. LIPTAK
1100 Goldome Center
Buffalo, New York 14203-1486

GARFUNKEL, WILD & TRAVIS LAW FIRM — LEONARD M. ROSENBERG
175 Great Neck Road
Great Neck, New York 11021

THUILLEZ, FORD LAW FIRM — DOMINIQUE A. POLLARA
90 State Street
Albany, New York 12207

THOMAS J. MCAVOY, DISTRICT JUDGE

AMENDED MEMORANDUM-DECISION & ORDER[1]

In an oral decision rendered on January 16, 1992 the court granted various of the defendants' motions to dismiss. This decision is reflected in the court's order dated January 31, 1992. However, the court reserved decision on the motions to dismiss the plaintiffs' claims under the Sherman Act, 15 U.S.C. §1 *et seq.*, and those under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 *et seq.* This constitutes the decision and order of the court on those motions.

FACTS

The plaintiffs, Dr. John Chong-Hwan Wee and Mrs. Nancy Young-Ok-Song Wee allege in their complaint, *inter alia*[2], violations of the Sherman Act, 15 U.S.C. §1 *et*

---

[1] Through typographical error the court's original Memorandum-Decision & Order incorrectly stated that the plaintiffs federal claims are dismissed with prejudice.

[2] The plaintiffs' remaining causes of action were disposed of in the court's order dated January 31, 1992. The plaintiffs' motion for reconsideration of that order was denied in an order dated April 28, 1992.

seq., violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§1961 *et seq.*, and various state law causes of action. Dr. Wee, originally from Korea, is a urologist duly licensed to practice medicine in the States of New York and Vermont. The alleged violations arose out of the formal credentialing, or peer review process, undertaken by the Rome Hospital and Murphy Memorial Hospital. The individual defendants played various roles in the peer review process from directly reviewing Dr. Wee to participating in the committee process.

The complaint alleges that in March of 1987, Dr. Wee applied for appointment to the medical staff of Rome Hospital and Murphy Memorial Hospital. On August 25, 1987 the Board of Managers appointed Dr. Wee to the Associate Medical Staff at these hospitals. The complaint further alleges that he was granted unconditional and full urological privileges. The complaint then alleges that Dr. Wee received excellent recommendations and references from various other doctors, and alleges that he has received satisfactory evaluations while at the hospitals.

The credentialing process continued; and although Dr. Wee was eventually elevated to the active medical staff, there were certain limitations placed on his clinical privileges. This was the recommendation given by the Executive Committee to the Board of Managers. Dr. Wee made a request for a hearing which was granted; and the hearing committee's report was reviewed by the Executive Committee.

The Executive Committee ultimately recommended that Dr. Wee be retained in the category of associate medical staff, that he update his continuing medical education, and that full urological privileges be restored

only after Dr. Wee demonstrated satisfactory completion of a program and preceptorship. This decision was reviewed by the Appellate Review Committee, and the Board of Managers adopted a similar resolution. The plaintiffs do not allege compliance with the requirements of New York State Public Health Law §2801-b—i.e. filing a complaint with the Public Health Council.

On November 5, 1990 the plaintiffs commenced an action in New York State Supreme Court, Oneida County, challenging the Board of Managers' decision. This action sought a judgment annulling the restrictions on his privileges. A hearing was held on March 5, 1991. In an order dated June 23, 1992 State Supreme Court Justice John S. Parker dismissed the plaintiff's action for, *inter alia*, faliure to file a complaint with the Public Health Council.

The plaintiffs' present complaint, filed on June 24, 1991, alleges that the defendants, and some other unidentified physicians, conspired to injure competition in the delivery of urological services in Central New York, and to injure Dr. Wee by abusing the peer review procedures provided by the hospital bylaws. The complaint provides a rather lengthy chronology of events and a detailed account of the alleged conspiracy.

DISCUSSION

The recent decision of the Second Circuit Court of Appeals in *Johnson v. Nyack Hospital*, _____ F.2d _____, 60 U.S.L.W. 2746, 1992 WL 95997 (2d Cir. 1992), is dispositive of the plaintiffs' remaining causes of action. In *Johnson* the plaintiff doctor's privileges were terminated by the defendants following a lengthy process—a process similar to the one which Dr. Wee describes in his complaint. Like Dr. Wee, the plaintiff in

Johnson failed to file a complaint with the New York Public Health Council prior to instituting his action in federal court. The plaintiff in *Johnson* did not seek reinstatement, but rather sought damages under the Sherman Act, 15 U.S.C. §1, *et seq.*, and various state law causes of action.

The district court dismissed the plaintiff's federal cause of action for failure to exhaust administrative remedies, and dismissed the remaining state law claims for lack of jurisdiction. On appeal to the Second Circuit, the district court's decision dismissing the plaintiff's action was affirmed. However, the court disavowed the district court's reliance on the doctrine of exhaustion of administrative remedies and instead relied on the doctrine of primary jurisdiction.

The court recognized that under New York Law a physician seeking to have his or her privileges restored must first file a complaint with the New York Public Health Council. *Fried v. Straussman*, 41 N.Y.2d 376, 377, 393 N.Y.S.2d 334, 335 (1977). However, the court noted that the plaintiff did not seek reinstatement, but only sought damages. Therefore his claim for damages was cognizable in the courts in the first instance, rather than in the administrative forum where a claim for reinstatement would initially be cognizable.

The court distinguished the doctrine of exhaustion from the doctrine of "primary jurisdiction". It explained that the doctrine of exhaustion applies where the plaintiff's claim is cognizable in the first instance in the administrative agency. However, the doctrine of primary jurisdiction " 'applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed

within the special competence of an administrative body. . .' *United States v. Western Pac.R.R.*, 352 U.S. 59, 64 (1956)." *Johnson*, (slip op. at p. 3652-3).

Having concluded that the issue of whether the plaintiff's privileges were terminated for a proper medical reason was dispositive of his antitrust claims, the court held that the doctrine of primary jurisdiction, rather than exhaustion, applied. Therefore, since the Public Health Council is best qualified to make that determination, the court concluded that the plaintiff must first resort to the Public Health Council before seeking damages in federal court on his antitrust claim.

In the present case the plaintiff not only has a claim under federal antitrust law, but also under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 *et seq.*. Nonetheless, the court concludes that, like the plaintiff's antitrust claims, the plaintiff's RICO claims are also necessarily dependent upon a determination of whether his privileges were legitimately restricted.[3]

Therefore, based upon the doctrine of primary jurisdiction and its application by the Second Circuit in *Johnson v. Nyack*, the court hereby dismisses without

---

[3] Moreover, as the court in *Johnson* observed, "judicial economy will be best served by requiring [the plaintiff] to file a complaint with the PHC before seeking judicial relief. The PHC often avoids the unpleasant task of besmirching a physician's reputation by:

> using its professional expertise to identify and discourage groundless claims, to mediate and to conciliate disputes between health-care professionals, and to offer the court some aid in resolving such disputes, should the parties fail to come to agreement on their own." *Cohoes Memorial Hosp. v. Department of Health*, 48 N.Y.2d 583, 589, 424 N.Y.S.2d 110, 113 (1979).

Johnson, (slip op. at 3654-5).

prejudice all remaining federal causes of action. Additionally, since there is no diversity of citizenship between the parties, based upon the decisions in *United Mine Workers v. Gibbs*, 491 U.S. 715, 86 S.Ct. 1130 (1966), and *Kavit v. A.L. Stamm & Co.*, 491 F.2d 1176 (2d Cir. 1974), the absence of any federal claim defeats the court's pendant jurisdiction over the plaintiff's state law claims. Therefore, those claims are also dismissed.

IT IS SO ORDERED.

Dated at Binghamton, New York
July 29, 1992

s/ THOMAS J. McAVOY
Thomas J. McAvoy
United States District Judge

APPENDIX Q

Amended Judgment of the United States District Court, Filed July 29, 1992.

U.S. DISTRICT COURT
N.D. OF N.Y.
ORIGINAL FILED
JUL 29 1992
GEORGE A. RAY, Clerk
BINGHAMTON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
_____ DISTRICT OF _____

A M E N D E D
JUDGMENT IN A CIVIL CASE

CASE NUMBER: 91-CV-716
Judge McAvoy

DR. JOHN CHONG-HWAN WEE,
MRS. NANCY YOUNG-OK-SONG WEE,
Plaintiffs,

v.

THE CITY OF ROME, ET AL.,
Defendants.

[ ] **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[x] **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to Amended Memorandum-Decision-Order dated July 29, 1992, by the Honorable Thomas J. McAvoy, all remaining federal causes of action in this case are dismissed without prejudice, and all state claims are also dismissed.

July 29, 1992
Date

s/ GEORGE A. RAY
Clerk

s/ PAT PRICE
(By) Deputy Clerk

APPENDIX R

Order (Summary Order) of the United States Court of Appeals, Filed August 14, 1997.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 14th day of August, one thousand nine hundred and ninety-seven.

PRESENT:
HON. GUIDO CALABRESI,
HON. JOSÉ A. CABRANES,
HON. FRED I. PARKER,
Circuit Judges.

UNITED STATES COURT OF APPEALS
FILED
AUG 14, 1997
GEORGE LANGE III, CLERK
SECOND CIRCUIT

O R D E R
 # 96-7598

DR. JOHN CHONG-HWAN WEE and
NANCY YOUNG-OK-SONG WEE,
Plaintiffs-Appellants,

vs.

JOHN ANDREWS, GLORIA BEAN, DR. JOSEPH J. BLAKELY, LUIGI BOTTINI, JOHN R. BRATGE, DR. CHARLES M. BROWN, DR. LAWRENCE M. BURGREEN, EDWARD CALLAHAN, DR. CHAU-FANG CHEN, DR. CHOWDARY CHIRUMAMILLA, DR. BARBARA A. CONNOR, CHARLES P. CONOLE, EMILIO D'ARGENIO, DR. JAMES D. DUNDA, BARBARA A. DURAND, RICHARD FIORINI, DR. PAUL G. FULLER, DR. RICHARD G. GOODIN, JOHN A. GORMAN, DR. LAWRENCE M. GLANTZ, MICHAEL HAYDUK, DR. NEVILLE W. HARPER, DR. WILLIAM HARTNAGEL, KIRK B. HINMAN, DR. JAMES E. JENKS, RICHARD J. KALEBA, CAMILLE T. KAHLER, DR. ROBERT G. KOCH, DR. YOUNG B. KWON, DR. GEORGE LIM, DR. JOHN B. LUDIN, DR. CHARLES H. LYNCH, SAMUAL MADONIA, NANCY MCNAMARA, DR. SHUBAN K. MOZA, LINDA MURPHY, DR. CHESTER L. PATRICK, JR., DAVID J. RAPKE, Esq., EDWARD REYNOLDS, RAYMOND ROLEWICZ, DR. ISAM A. SAKATI, PHILIP J. SANZONE, Esq., RONALD SHAMMA, DR. HERBERT L. SKOGLAND, DR. BRUCE C. SLAGLE, DR. HENRY A. SPARKS, GRETCHEN SPROCK, VICTORIA STEVENS, DR. ARTHUR M. STOCKMAN, DR. PAUL PTEMPLE, DR. LOUIS H. VAN SLYKE, CROUSE IRVING MEMORIAL HOSPITAL, DARLENE BURNES, and ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL, the Board of Managers, the Medical Liaison Committee, the Executive Committee, the Credentials Committee, the Committee of Preceptors,

the Appellate Review Committee, the Surgical Audit Committee, Medical Directors, Chief Executive Officers,

Defendants-Appellees.

Appearing for Appellant: JOHN CHONG-HWAN WEE, *pro se*

Appearing for Apellees: LEONARD M. ROSENBERG, Great Neck, NY
MARK DUNN, DeWitt, NY
MICHAEL HUTTER, Albany, NY

UPON CONSIDERATION of this appeal from a judgment of the United States District Court for the Northern District of New York (Scullin, *J.*), it is hereby

ORDERED, ADJUDGED, AND DECREED that the judgment be and it hereby is AFFIRMED.

Dr. John Chong-Hwan Wee and Mrs. Nancy Young-Ok-Song Wee, *pro se*, appeal the judgment of the United States District Court for the Northern District of New York (Scullin, *J.*) granting defendants' motion to dismiss their complaint for failure to state a claim.

Dr. Wee, whose staff privileges to perform urological surgery were limited by Rome Hospital, filed suit against the defendants, all of whom are associated in one way or another with the hospital and its process for credentialing physicians. Wee alleges a wide spread conspiracy to deprive him of various rights. His complaint is based on federal civil rights statutes, 42 U.S.C. §§1983 and 1985; the First and Fourteenth Amendments to the United States Constitution; federal antitrust laws, 15 U.S.C. §§1,2, and 15(a)); the Racketeering Influenced and Corrupt Organizations Act,

("RICO"), 18 U.S.C. §§1951, 1961, 1962 and 1964(c)); medical staff bylaws of Rome Hospital; New York Public Health Law §2805; New York Education Law §6527; and state defamation law. Mrs. Wee brought a related claim for the loss of consortium she allegedly suffered as a result of the injuries suffered by her husband.

The district court dismissed the complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. The court found that many of the claims were barred by *res judicata* because the plaintiffs had raised them before in other lawsuits in federal or state court. The remaining federal claims were dismissed because—even accepting as true all the factual allegations in the complaint and drawing all inferences in favor of the plaintiffs—it was clear that the plaintiffs could prove no set of facts in support of their claims that would entitle them to relief. Once it dismissed all of the federal claims, the court used its discretion and declined to exercise supplemental jurisdiction over the state law claims.

We review the district court's decision to dismiss the complaint *de novo*. Having considered all of the arguments raised by the plaintiffs, we find that we are in agreement with the district court. The judgment is therefore affirmed substantially for the reasons stated by that court. The motions to correct the "misstatements" in the record on appeal are without merit and are denied. The motion to strike Wee's *pro se* brief for failure to conform to Fed. R. App. P. 32 is denied as moot.

s/ GUIDO CALABRESI
Hon. Guido Calabresi

s/ JOSÉ A. CABRANES
Hon. José A. Cabranes

s/ FRED I. PARKER
Hon. Fred I. Parker

Circuit Judges

APPENDIX S1

Order of the United States Court of Appeals, Filed January 29, 1997.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Each motion must be accompanied by a supporting affidavit (Local Rule 27(a)).

96-7598
Docket Number

NOTICE OF MOTION

state type of motion

for To Correct Misstatements in the Defendants' Records

Wee V Rome & Murphy Hosp.

Docket No. 96-7598
Use short title

UNITED STATES COURT OF APPEALS
FILED
JAN 28 1997
GEORGE LANGE III, CLERK
SECOND CIRCUIT

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Dr. John Chong-Hwan Wee and
Mrs. Nancy Young-Ok-Song Wee
1 Belvedere Lane
Batavia, New York 14020
Pro Se : (716) 343-8304

OPPOSING COUNSEL: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Leonard M. Rosenberg, Esq.,
Garfunkel, Wild & Travis, P.C.,
111 Great Neck Road,
Great Neck, New York 11021,
(516) 393-2200

Has consent of opposing counsel:

A. been sought? [x] Yes [ ] No
B. been obtained? [ ] Yes [x] No

Has service been effected? [x] Yes [ ] No
Is oral argument desired? [ ] Yes [x] No
(Substantive motions only)
Requested return date:
(See Second Circuit Rule 27(b))
Has argument date of appeal been set:

A. by scheduling order? [x] Yes [ ] No
B. by firm date of argument notice? [ ] Yes [x] No
C. If Yes, enter date: The Week of April 1, 1997

Judge or agency whose order is being appealed:
Judge: Frederick J. Scullin. DC: N.D.N.Y.
DC Dkt: 93-CV-894

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? [ ] Yes [ ] No
(See F.R.A.P. Rule 8)
Would expedited appeal eliminate need for this motion? [ ] Yes [ ] No
If No, explain why not:

Will the parties agree to maintain the status quo until the motion is heard? [ ] Yes [ ] No

Brief statement of the relief requested: "ORDER that the Numerous Misstatements in the Various Records on Appeal of the Various Defendants be clarified and corrected, and that the clarified and corrected records be certified and transmitted." requested.

By: *(Signature of attorney)*
s/ DR. JOHN CHONG-HWAN WEE
Signed name must be printed beneath Date
Dr. John Chong-Hwan Wee January 16, 1997

Appearing for: *(name of party)*
Pro Se
Appellant or Petitioner:
[x] Plaintiff [ ] Defendant
Appellee or Respondent:
[ ] Plaintiff [ ] Defendant

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is ~~granted~~ ~~denied~~ sent to the panel which will hear the appeal.

For the Court
George Lange III, Clerk
By (Illegible) Minuse
Sup Staff Atty
~~Circuit Judge~~

JAN 29 1997
Date

UNITED STATES COURT OF APPEALS
FILED
JAN 29 1997
GEORGE LANGE III, CLERK
SECOND CIRCUIT

APPENDIX S2

Order of the United States Court of Appeals, Filed March 21, 1997.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Each motion must be accompanied by a supporting affidavit (Local Rule 27(a)).

96-7598

Docket Number

NOTICE OF MOTION

state type of motion

for To Correct Misstatements in Hon. Frederick J. Scullin, Jr.'s Records

---

Wee V Rome & Murphy Hosp.

Docket No. 96-7598

Use short title

UNITED STATES COURT OF APPEALS
FILED
MAR 91 1997
(Illegible)
(Illegible)

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Dr. John Chong-Hwan Wee and
Mrs. Nancy Young-Ok-Song Wee
1 Belvedere Lane
Batavia, New York 14020
Pro Se : (716) 343-8304

OPPOSING COUNSEL: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Leonard M. Rosenberg, Esq.,
Garfunkel, Wild & Travis, P.C.,
111 Great Neck Road,
Great Neck, New York 11021,
(516) 393-2200

Has consent of opposing counsel:

A. been sought?	[ ] Yes	[x] No
B. been obtained?	[ ] Yes	[x] No
Has service been effected?	[x] Yes	[ ] No
Is oral argument desired?	[ ] Yes	[x] No
(Substantive motions only)		
Requested return date:		
(See Second Circuit Rule 27(b))		
Has argument date of appeal been set:		
A. by scheduling order?	[x] Yes	[ ] No
B. by firm date of argument notice?	[ ] Yes	[x] No
C. If Yes, enter date: The Week of April 28, 1997		

Judge or agency whose order is being appealed:
Judge: Frederick J. Scullin. DC: N.D.N.Y.
DC Dkt: 93-CV-894

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below?	[ ] Yes	[ ] No
(See F.R.A.P. Rule 8)		
Would expedited appeal eliminate need for this motion?	[ ] Yes	[ ] No
If No, explain why not:		
Will the parties agree to maintain the status quo until the motion is heard?	[ ] Yes	[ ] No

Brief statement of the relief requested: "ORDER that the Numerous Misstatements in the Honorable Frederick J. Scullin, Jr.'s Various Records on Appeal: The Arpil 15, 1996 Decision And Order (93-CV-894 FJS-GJD) (Dkt §65) [0047-62] be clarified and corrected, and that the clarified and corrected records be certified and transmitted." requested.

By: *(Signature of attorney)*
s/ DR. JOHN CHONG-HWAN WEE
Signed name must be printed beneath Date
Dr. John Chong-Hwan Wee March 18, 1997

Appearing for: *(name of party)*
Pro Se
Appellant or Petitioner:
[x] Plaintiff [ ] Defendant
Appellee or Respondent:
[ ] Plaintiff [ ] Defendant

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is ~~granted~~ ~~denied~~ sent to the panel which will hear the appeal.

For the Court
George Lange III, Clerk
By (Illegible) Minuse
Sup Staff Atty
~~Circuit Judge~~

MAR 21 1997
Date

UNITED STATES COURT OF APPEALS
FILED
MAR 21 1997
GEORGE LANGE III, CLERK
SECOND CIRCUIT

APPENDIX T

Order of the United States Court of Appeals, Filed October 7, 1997

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

GEORGE LANGE III
CLERK

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED
OCT 7 1997
GEORGE LANGE III, CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the seventh day of October one thousand nine hundred and ninety-seven.

Dkt No: 96-7598

Wee

v

Rome & Murphy Hosp.

A petition for rehearing containing a suggestion that the action be *reheard* in banc having been filed herein by the appellant Dr. John Chong-Hwan Wee.

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT

GEORGE LANGE III, Clerk

s/ By: BETH J. MEADOR
Beth J. Meador
Administrative Attorney

p o ccc
inbancdn__frm

APPENDIX U1

Order of the United States Supreme Court, Entered March 9, 1998.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

March 9, 1998

Mr. John Chong-Hwan Wee
Nancy Young-Ok-Song Wee
1 Belvedere Lane
Batavia, NY 14020

Re: John Chong-Hwan Wee, et ux.
v. John Andrews, et al.
No. 97-6836

Dear Mr. Wee:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

s/ WILLIAM K. SUTER
William K. Suter, Clerk

APPENDIX U2

Order of the United States Supreme Court, Entered April 27, 1998.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

April 27, 1998

Mr. John Chong-Hwan Wee
Nancy Young-Ok-Song Wee
1 Belvedere Lane
Batavia, NY 14020

Re: John Chong-Hwan Wee, et ux.
v. John Andrews, et al.
No. 97-6836

Dear Mr. Wee:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

s/ WILLIAM K. SUTER
William K. Suter, Clerk

APPENDIX V

Order of the United States Court of Appeals, Filed February 9, 2000.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

KAREN GREVE MILTON
ACTING CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 9th day of February two thousand.

Present:

Hon. Amalya L. Kearse,

Hon. Fred I. Parker,

Hon. Rosemary S. Pooler,

CIRCUIT JUDGES,

UNITED STATES COURT OF APPEALS
FILED
FEB 9 2000
KAREN GREVE MILTON ACTING CLERK
SECOND CIRCUIT

Docket No. 99-7008

Wee

v

Rome & Murphy Hosp.

A petition for panel rehearing having been filed herein by appellants pro se, Nancy Young-Ok-Song Wee and Dr. John Chong-Hwan Wee,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is **DENIED**.

FOR THE COURT
KAREN GREVE MILTON, Acting Clerk

s/ By: BETH J. MEADOR,
Beth J. Meador
Administrative Attorney

APPENDIX W1

Federal Rules of Civil Procedure Rule 60(b).

FEDERAL RULES OF CIVIL PROCEDURE

VII. JUDGMENT

Rule 60. Relief from judgment or Order

* * *

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally

notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

APPENDIX W2

New York Public Health Law Section 2801-b
New York Codes, Rules, and Regulations:
10 N.Y.C.R.R. 93
New York Public Health Law Section 2801-c

NEW YORK STATE LAWS, AND CODES, RULES, AND REGULATIONS

(1) *NEW YORK PUBLIC HEALTH LAW SECTION 2801-b* provides:

"Subdivision 1. It shall be *an improper practice* for the governing body of a hospital to ... curtail, terminate or diminish in any way a physician's ... professional privileges in a hospital, without stating the reasons therefor, or if the reasons stated are unrelated to standards of patient care, patient welfare, the objectives of the institution or the character or competency of the applicant.

Subdivision 2. Any person claiming to be aggrieved by an improper practice as *defined* in this section may, by himself or his attorney, make, sign and file with the public health council a verified complaint in writing which shall state the name and address of the hospital whose governing body is alleged to have committed the improper practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the council.

Subdivision 3. After the filing of any such complaint, the public health council shall make a prompt investigation in connection therewith. In conducting such investigation, the public health council is authorized to receive reports from the governing body of the hospital and the complainant, as the case may be, and the furnishing of such information to the public health council, or by the council to the governing body or complainant, shall

not subject any person or hospital to any action for damages or other relief. Such information when received by the public health council, or its authorized representative, shall be kept confidential and shall be used solely for the purposes of this section and the improvement of the standards of patient care and patient welfare. The records of such proceedings shall not be admissible as evidence in any other action of any kind in any court or before any other tribunal, board, agency, or person. If the council shall determine after such investigation that cause exists for crediting the allegations of the complaint, the council shall promptly so advise the governing body of the hospital against which the complaint was made, and shall direct that such governing body make a review of the actions of such body in ... curtailing, terminating or in any way diminishing such physician's ... professional privileges in the hospital.

Subdivision 4. *The provisions of this section shall not be deemed to impair or affect any other right or remedy.*"

(2) *NEW YORK CODES, RULES, AND REGULATIONS*
10 N.Y.C.R.R. PART 93:

(A) *10 N.Y.C.R.R. SECTION 93.3* provides:

"... The Council (Public Health Council) may dismiss a complaint, or a portion of a complaint that raises issues which do not fall within the scope of section 2801-b of the Public Health Law. In such instance, the Public Health Council shall *notify* the complainant and hospital of *the reasons for such dismissal.*"

(B) *10 N.Y.C.R.R. SECTION 93.5(b)* provides:

"If the Public Health Council shall determine after investigation, that cause does not exist for crediting the allegations of the complaint, the Public Health Council shall promptly notify the complainant and the governing body of the hospital against which the complaint was made of *its findings including the reasons for not crediting the allegations of the complaint.*"

(3) *NEW YORK STATE PUBLIC HEALTH LAW SECTION 2801-C* provides:

"The supreme court may enjoin violations or threatened violations of any provisions of this article; and it may enjoin violations of the regulations of the department adopted thereunder. . . . In any action for injunction brought pursuant to this article, any finding of the public health council or the commissioner or hearing officer designated by either shall be prima facie evidence of the fact or facts found therein."

APPENDIX X

Recommendation and Report of the Fair Hearing Committee of Rome Hospital and Murphy Memorial Hospital, Dated April 6, 1990.

ROME HOSPITAL AND MURPHY
MEMORIAL HOSPITAL
1500 NORTH JAMES STREET
ROME, NEW YORK 13440

MEDICAL STAFF

DATE: April 6, 1990

TO: Executive Committee of the Medical Staff

FROM: Fair Hearing Committee of the Medical Staff for Physician 468

Gentlemen:

After consideration of all the evidence presented to us, this Committee unanimously recommends granting Dr. Wee full urological privileges in the Associate Medical Staff category.

Numerous errors have been found in Dr. Lynch's review. (See attached report.)

We also suggest that another independent and unbiased urologist review the cases discussed by Dr. Lynch without prior knowledge of Dr. Lynch's findings.

Due to the small number of surgical cases, we recommend that all Dr. Wee's surgical cases be reviewed until the monitoring committee is satisfied with the quality of care to the patients.

Respectfully submitted,

s/ ANDREW ZALESKI, M.D.
Andrew Zaleski, M.D.
Chairman

s/ RICHARD S. LARKIN, DPM
Richard S. Larkin, DPM

s/ KESAVA POTLURI, M.D.
Desava Potluri, M.D.

s/ MING JER PAN, M.D.
Ming Jer Pan, M.D.

s/ GARY TART, M.D.
Gary Tart, M.D.

AZ:sd

FAIR HEARING COMMITTEE REPORT ON PHYSICIAN 468

Please refer to Dr. Charles H. Lynch's letter of February 1, 1990 with his review of the following cases. These cases listed by Dr. Lynch were reviewed.

Case 11. Aaron Bolden - Chart #218060. We did not find any specific reason for not having the left testicle explored of the time of the right orchiopexy although the left testicle was reported to be small.

Case 18. Henry Casler - Chart #221186. The patient's symptomatology which led to the TUR are clearly documented in the hospital records. The patient apparently was catheterized previously and pulled the catheter out. The surgical procedure took from 12:30 p.m. to 1:19 p.m.—a total of 44 minutes. The specimen taken proved to be adequate to releave the patient's urinary obstruction.

Contrary to Dr. Lynch's statements, other urologist consider it more difficult for the patient to live with a suprapubic cystostomy with a catheter and a urinary bag than following a TURP. They also consider that following cystosomy the open wound connecting the skin to the urinary system has an increased possibility of infections.

The Committee feels that treatment rendered to this patient was appropriate.

Case 13. Luigi Mariani - Chart #0218496/0217697. A complicated case that was treated by several surgeons prior to Dr. Wee's assumption of care. He had several episodes of hematuria dating back to 1981. The patient developed elevation of temperature following a needle biopsy of the prostate of 10-26-87 without significant elevation of white blood count. It was treated with

appropriate antibiotics. Once the temperature came down, a suprapubic prostatectomy was carried out. With an IVP and sonogram done previously and interpreted as negative, other sources of bleeding were searched for in the bladder and prostrate. Repeated cystoscopy did not clarify the source of bleeding and eventually Dr. Sakati performed a nephrectomy. This was a difficult case where the diagnosis was possibly missed by several physicians. The cystoscopy under spinal anesthesia did not take 2 hours as reported by Dr. Lynch but was started at 12:50 p.m. and finished at 2:00 p.m. The total surgical time was 1 hour 10 minutes. The Committee understands the diagnostic difficulties Dr. Wee faced in finding the source of the bleeding.

Case 16. Clyde Champlin - Chart #219081. This patient was admitted with urinary retention of 700 cc. He had a limited TURP which solved his problem and permitted his discharge from the hospital in control of his urinary problems until his readmission 6 months later for a terminal unrelated condition. This surgical procedure according to Dr. Lynch lasted 1½ hours but according to the hospital records the surgical procedure started at 10:35 a.m. and ended at 11:50 a.m. A total surgical time of 1 hour and 15 minutes. The committee feels that this patient received excellent treatment by Dr. Wee.

Case 15. Francis Richie - Chart #219001. A question was raised regarding 2 surgical procedures. The surgeon explained that the biopsy could not have been taken through the smaller scope used for the cystoscopy which was done under local anesthesia. The first procedure took 20 minutes. The second procedure was performed by 2 urologists between 11:35 a.m. and 1:40 p.m. The procedure lasted 2 hours and 5 minutes. They took several specimens and encountered bleeding during the procedure which prolonged the operative time. After

contacting other urologists and an oncologist the Committee feels that the admission for a TUR was appropriate and pathological specimen was necessary for grading of the tumors. Other urologists consider that doing cystostomy could spread tumors intra-abdominally.

A CT scan of the chest and abdomen was ordered following surgery. The committee believes that this patient's admission and care was appropriate.

Case 34. Herbert Younglove - Chart #22630. Dr. Lynch's criticism that this patient had "excessive lab work" is not considered correct. This patient had a CBC, PT. PTT, chem profile, lytes, acid phosphatase, 2 blood cultures, chest x-rays, and an electrocardiogram. These studies appeared to be reasonable in an elderly diabetic with fever and gross urinary blood. Dr. Lynch stated that surgery took over an hour. This is incorrect. It extended from 1:25 p.m. to 2:15 p.m.—total surgical time 50 minutes. In review, the symptoms appear to be well documented in the chart including gross hematuria, right flank pain, frequency q 1 hour and 2+ albumin. Dr. Lynch's statement was found to be incorrect.

Case 38. Harry Longo - Chart #0223265. This patient's procedure started at 9:45 a.m. and ended at 11:45 a.m.—total surgical time 2 hours. The surgical records indicate that after an unsuccessful TUR, which was difficult and associated with bleeding, Dr. Wee wanted to do a suprapubic prostatectomy and was not permitted to do so and ended up with a cystostomy which occluded and eventually required a suprapubic prostatectomy. It is the commission's opinion that Dr. Wee should have been allowed to do a suprapubic prostatectomy once the transureteral prostatectomy was found to be impossible. This was considered to be the treatment of choice by the consulted urologist. A complication which required an

eventual re-operation was considered to be secondary to the fact that Dr. Wee was not permitted to do the definitive procedure.

Case 33. Richard Martin - Chart #22251. This patient underwent cystostomy and a suprapubic prostatectomy with the total surgical time from 8:20 a.m. to 9:40 a.m. The total surgical time for both procedures was 1 hour and 20 minutes. This includes the time required for re-prepping and re-draping. The manner of obtaining hemostasis is considered a matter of preference. In this case, it did not appear to extend the surgical time.

The "rambling" and difficulties in following the patient's history and physical in this case described on page 159 of the transcript of the hearing held March 3, 1990 does not appear to be confirmed by our evaluation. Dr. Wee's histories and physicals appear to be very meticulous, thorough and pertinent to the patient's condition.

Case 27. Clayton Cummings - Chart #221602. This patient died of a myocardial infarction unrelated to Dr. Wee's care. Dr. Lynch's statement about the time of surgery being 1½ hours is incorrect. It extended from 8:25 a.m. to 9:30 a.m., a total surgical time of 1 hour and 5 minutes.

The Committee feels that the use of 2 foley catheters, 1 suprapubic and 1 transurethral, adds extra safety to the drainage of the bladder during the initial postoperative course in case one of the catheters become occluded. Conclusion: No adverse findings.

Cases 21 and 25. John Pope - Chart #221532. This patient was admitted on 2 occasions. He had to be discharged due to a skin rash documented on the discharge summary. Dr. Lynch's criticism that the patient's medical record makes no mention of the known tumor was incorrect as the discharge summary clearly

states that the patient was discharged to be readmitted at a later date for his nephrectomy due to a kidney tumor. See discharged summary of 5/30/88. The surgical report indicates that the Gerota's fascia was not open during the surgical procedure. The adrenal gland is not mentioned in the pathology report. The cancer of the kidney involved the lower pole.

Case 9. Joseph Vaccaro - Chart #223918. This patient's diagnostic cystoscopy was done on 10/26/88 from 10:25 a.m. to 10:40 a.m.—total time 15 minutes—as an outpatient under local anesthesia. A large prostate was found, and the patient was readmitted for TURP as an inpatient on 11/1/88. The surgical time of this procedure was from 10:25 a.m. to 11:15 a.m. The total surgical time was 50 minutes.

The TURP could not have been done under local anesthesia.

The OR note indicates some prostate tissue was lost. The issue was addressed by Dr. Wee on the day of surgery on his surgical report of the case.

Case 31. Robert Beach - Chart #222142. This patient's OR record indicates a mistake. According to the record the patient's surgery was started before he arrived to the surgical suite—time in 9:55 a.m, time out 10:40 a.m., incision time 9:40 a.m., closed 10:35 a.m., anesthesia started 9:55 a.m., anesthesia ended 10:40 a.m.

The whole timing in this case is wrong and should not have been used for any criticism.

The patient did well.

Case 30. Herbert Daniels - Chart #221783. This patient underwent a TURP. The surgical time was from 10:35 a.m. to 11:35 a.m.—total surgical time 1 hour.

No deficiencies found in this case.

Dr. Lynch criticized repeatedly "excessive instrumentation" in the treatment of this patient. The method used to dilate the urethra appears to be a matter of personal technique or preference rather than any specific deficiencies. Other technical patterns have been noted when discussing the issue with other urologists.

There is a repeated mention in Dr. Lynch's letter about a small amount of tissue removed. Repeatedly, the amount of tissue is measured in several cubic centimeters which when added should result in a much greater weight than reported. When discussed with a pathologist this may be attributable to the fact that the specimen does shrink at the time of fixation resulting in a smaller volume and a smaller weight as the water becomes eliminated during the fixation process. The amount of tissue removed appeared to be appropriate to treat the patients successfully.

AZ:sd

APPENDIX Y

Portions of Dr. and Mrs. Wee's Complaint.

* * *

[28] 90. Dr. Henry A. Sparks (Defendant #48, then Medical Director), wrote a good clinical reference about Dr. John Chong-Hwan Wee, Plaintiff, to Mr. F. James Murphy (Administrator of Genesee Memorial Hospital in Batavia, New York) on February 8, 1988, the contents of which were as follows:

90A. Dr. Wee has satisfactory clinical knowledge

90B. Dr. Wee has satisfactory clinical competence

90C. Dr. Wee has satisfactory emotional stability

90D. Dr. Wee has satisfactory work habits

90E. Dr. Wee has satisfactory participation in staff and committee activities

90F. Dr. Wee has satisfactory relationships with patients, peers, and hospital staff

90G. Dr. Wee has a satisfactory professional attitude

90H. Dr. Wee has satisfactory character

90I. Dr. Wee has satisfactory ability to work with others

90J. Dr. Sparks recommends without reservation for appointment with all requested privileges for Dr. Wee.

[29] 91. Dr. Shuban K. Moza (Defendant #37, Chairman of the Department of Surgery) wrote a good clinical reference about Dr. John Chong-Hwan Wee, Plaintiff, to Mr. F. James Murphy (Administrator of

Genesee Memorial Hospital in Batavia, New York) on March 18, 1988, the contents of which were as follows:

91A. Dr. Wee has satisfactory clinical knowledge

91B. Dr. Wee has satisfactory clinical competence

91C. Dr. Wee has satisfactory emotional stability

91D. Dr. Wee has satisfactory work habits

91E. Dr. Wee has satisfactory participation in staff and committee activities

91F. Dr. Wee has satisfactory relationships with patients, peers, and hospital staff

91G. Dr. Wee has a satisfactory professional attitude

91H. Dr. Wee has satisfactory character

91I. Dr. Wee has satisfactory ability to work with others

91J. Dr. Moza recommends without reservation for appointment with all requested privileges for Dr. Wee.

91K. *"Dr. Wee is an excellent urologist, and deeply cares for his patients."*

92. Dr. Subbarao V. Ramineni, internist at Rome Hospital and Murphy Memorial Hospital, wrote a good recommendation letter to the Medical Director of Genesee Memorial Hospital in Batavia, New York on March 18, 1988 which contained the following statements about Dr. John Chong-Hwan Wee, Plaintiff:

[30] 92A. Dr. Wee has high moral and ethical standards

92B. Dr. Wee relates well with both his patients and peers

92C. Dr. Wee fulfilled the obligations of a staff practitioner

92D. Dr. Wee has no problems with his clinical performance or record keeping

92E. Dr. Wee will be an asset in any position he may choose to accept

92F. Dr. Ramineni used Dr. Wee's consultations and found Dr. Wee to be good in his professional standing as well as patient acceptance.

* * *

[32] 104. Since Dr. John Chong-Hwan Wee, Plaintiff, started his private urology medical practice at the Rome Hospital and Murphy Memorial Hospital in September, 1987, Dr. Henry A. Sparks [33] (Defendant #48, then Medical Director) had told Dr. Wee almost every day until September 18, 1988 that

104A. every physician, all hospital personnel, and all hospital authorities had been pleased with Dr. Wee's professional qualifications and urology medical care at the Rome Hospital and Murphy Memorial Hospital and in the Rome, New York area

104B. no written or verbal complaints had been lodged against Dr. Wee

104C. no written or verbal accusations of wrongdoing had been placed against Dr. Wee

105. Dr. John Chong-Hwan Wee, Plaintiff, is and has been in good standing both personally and professionally. No one has ever lodged any complaints or any charges of wrongdoing against Dr. Wee. The Governing Bodies and Officers of the Rome Hospital and Murphy Memorial Hospital (Defendants) have not given Dr. Wee any specific and detailed accusations of wrongdoing against Dr. Wee based on facts and/or

evidence because there is no basis for such actions and because there are no facts and/or evidence for such actions.

* * *

[38] 125. Dr. Henry A. Sparks (Defendant #48, then Medical Director), on September 21, 1988 and thereafter, and three members of the Committee of Preceptors, Dr. John B. Ludin (Defendant #33), Dr. Charles M. Brown (Defendant #8), and Dr. Neville W. Harper (Defendant #24), on November 14, 1988, told Dr. John Chong-Hwan Wee, Plaintiff, the following:

> 125A. Dr. Wee should resign immediately from the medical staff and leave the Rome Hospital and Murphy Memorial Hospital immediately
>
> 125B. If Dr. Wee did not resign immediately, then the Hospital Authorities would report to the New York State Health Department that New York State should remove Dr. Wee's medical license to practice medicine and surgery, immediately
>
> 125C. If Dr.Wee did not resign immediately, then the hospital would suspend Dr. Wee's medical staff privileges
>
> 125D. The physicians on the medical staff would never again refer any patients to Dr. Wee anymore.

* * *

[52] 158. Dr. Henry A. Sparks (Defendant #48, then Medical Director), Dr. Isam A. Sakati (Defendant #43, part time urologist from Utica, New York) and Dr. Young B. Kwon (Defendant #31, part time urologist from Oneida, New York) told Dr. John Chong-Hwan Wee, Plaintiff, the following sometime during the period between March 21, 1989 and March 3, 1990:

158A. Dr. Wee should send all of his patients and prospective patients to either Dr. Sakati or Dr. Kwon.

158B. Dr. Wee would be given extremely limited and punitive urological privileges such as Circumcision and Vasectomy (probably about five very minor operations per month)

158C. Dr. Wee would be promoted to the Active Medical Staff in return

158D. Dr. Wee should work at the New York State Rome Developmental Center as a general medical physician for his main income

158E. The hospital authorities would not remove Dr. Wee's license to practice medicine and surgery in return

158F. Dr. Wee would never be a urology specialist anywhere anymore in the future.

* * *

[90] 281. The Defendants, Governing Bodies and Officers of the Rome Hospital and Murphy Memorial Hospital, were jointly involved in a course of conduct, agreement, and conspiracy with purpose and effect of which was to injure the Plaintiff (Dr. John Chong-Hwan Wee) (DEPRIVATION OF CIVIL RIGHTS AND PRIVILEGES) and to injure competition in the delivery of Urology services in Central New York (MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE).

282. The Defendants, Governing Bodies and Officers of the Rome [91] Hospital and Murphy Memorial Hospital, participated in the conspiratorial, fraudulent, arbitrary, capricious, intentional, negligent, unilateral, improper, unjust, and illegal Corrective Actions against

the Plaintiff (Dr. John Chong-Hwan Wee) [Corrective Actions against Dr. Wee herein] which caused various injuries to Dr. Wee.

* * *

[135] 359. The Board of Managers (Defendants), on June 28, 1990, took the following Third and Final Adverse Decision regarding Dr. John Chong-Hwan Wee, Plaintiff:

> "RESOLVED that Physician #468 (Dr. Wee) be retained as a member of the Associate Medical Staff in the Department of Urology for a period not to exceed one year, and that his privileges be limited to minor surgical procedures such as circumcision and scrotal surgery, but not including oncology, until such time as he shall have (a) updated his continuing medical education credits appropriate to his specialty and (b) demonstrated to the Credentials Committee the satisfactory completion of a period of preceptorship in a recognized medical center setting consistent with the most common procedures in his specialty, or, the satisfactory completion of an alternative form of training which the Credentials Committee and Medical Staff Executive Committee determine, in advance, as providing clinical training substantially equivalent to that provided by such preceptorship."
>
> At that time, he may request advancement to Active Staff Status. Further, Physician #468's (Dr. Wee) cases will be monitored by a committee of the Medical Staff for at least one year after he is granted full privileges, with such outside consultation as may be necessary."

360. The contents in the Board of Managers' June 28, 1990 Third and Final Adverse Decision imply the continuation of conspiracy by the Defendants (the Governing Bodies and Officers of Rome Hospital And Murphy Memorial Hospital). (See below.)

* * *

[201] 496. * * *

(3) *42 U.S.C. Section 1985(3)*

Conspiracy to interfere with civil rights
—Depriving persons of rights or privileges

Dr. John Chong-Hwan Wee (Plaintiff) suffered discrimination, and is injured in his person and deprived of having and exercising rights and privileges of a citizen of the United States because the Defendants (America-born Physicians, American Citizen, American Medical School Graduates, White race, and Anglosaxon) conspired, [202] with the intent of discrimination, for the purpose of depriving, directly and indirectly, a person [Dr. John Chong-Hwan Wee (Plaintiff)], and class of persons [Dr. John Chong-Hwan Wee (Plaintiff, South Korea-born Physician, Foreign-born Physician, Naturalized Citizen of the United States of America since 1970's, International Medical School Graduate, Northeast Oriental, Yellow Race, Non-Anglosaxon, Minority among the Minorities in the United States of America)] of the equal protection of the laws, and of equal privileges under the laws.

* * *

496. * * *

(4A) *42 U.S.C. Section 1983* Civil Action for Deprivation of Rights
(4B) *The First Constitution Amendment*—Freedom of Speech
(4C) *The Fourteenth Constitution Amendment*—Due Process of Law

Dr. John Chong-Hwan Wee (Plaintiff) renews the claims under 42 U.S.C. Section 1983, the First Constitution Amendment, and the Fourteenth Constitution Amendment following recent discovery of the new facts and the new evidence. (Dr. Wee's last discovery of the new facts and the new evidence on May 28, 1993, Friday.)

Dr. John Chong-Hwan Wee (Plaintiff) reported to two Medical Directors (Defendants) and three Chief Executive Officers (Defendants) of the Rome Hospital and Murphy Memorial Hospital (Defendants), and Mayor of the City of Rome about the medical wrongdoings committed by the Defendants (See Paragraphs 228-248.) and the administrative wrongdoings committed by the Defendants (See Paragraphs 250-270.) for the public concerns. Because of Dr. Wee's reports, among others, Dr. Wee has been the subject of ongoing harassments and threats by the Defendants and has been the subject of unilateral Corrective Actions against Dr. Wee without due process of law, as guaranteed by the Fourteenth Constitution [203] Amendment. The Defendants, including Darlene Burns (Defendant #55), and their Attorneys retaliated against Dr. Wee for exercising his right of free speech, guaranteed by the First Constitution Amendment. Dr. John Chong-Hwan Wee (Plaintiff) claims deprivation of civil rights guarantees to due process and freedom of speech. Dr. John Chong-Hwan Wee, Plaintiff, is permanently excluded from his profession as a professional urologist (Liberty) because of the Defendants' wrongdoings. (See Paragraphs 501 and 501A.)

* * *

496. * * *

(5) *28 U.S.C. Section 1367*
Supplemental (Pendent State) Jurisdiction

Supreme Court, U.S.
FILED
JUN - 3 2000
CLERK

(2)

No. 99-1779

IN THE

Supreme Court of the United States

DR. JOHN CHONG-HWAN WEE
and NANCY YOUNG-OK-SONG WEE,

Petitioners,

v.

ROME MEMORIAL HOSPITAL, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR HOSPITAL RESPONDENTS

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COUNTERSTATEMENT OF QUESTION PRESENTED

Should this Court invoke its Certiorari Jurisdiction to review the unpublished summary order of the United States Court of Appeals for the Second Circuit, where that Court's order did not conflict with the decision of another United States Court of Appeals on any issue, and petitioners ask this Court to exercise its supervisory power to correct alleged intentional misapplications of law and fact by the lower courts?

CORPORATE DISCLOSURE STATEMENT

Rome Hospital and Murphy Memorial Hospital became a private hospital and was renamed Rome Memorial Hospital, Inc. Rome Memorial Hospital, Inc.'s parent company is Greater Rome Affiliates, Inc. No publicly held corporation owns 10% or more of the stock of Rome Memorial Hospital, Inc.

Crouse Irving Memorial Hospital changed its name to Crouse Health Hospital, Inc. (d/b/a Crouse Hospital). Crouse Health Hospital, Inc.'s parent company is Crouse Health, Inc. No publicly held corporation owns 10% or more of the stock of Crouse Health Hospital, Inc.

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United States Supreme Court Rule 10 6

PRELIMINARY STATEMENT

This brief is submitted on behalf of respondents Rome Hospital and Murphy Memorial Hospital (the "Hospital"), Crouse-Irving Memorial Hospital, John Andrews, Gloria Bean, Joseph Blakely, M.D., Luigi Bottini, John Bratge, Darlene Burns, Edward Callahan, Charles Conole, Emilio D'Argenio, Richard Fiorini, Richard Goodin, M.D., Michael Hayduk, William Hartnagel, M.D., Kirk Hinman, Richard Kaleba, Camille T. Kahler, Robert G. Koch, M.D., Charles Lynch, M.D., Samuel Madonia, Nancy McNamara, David Rapke, Edward Reynolds, Raymond Rolewicz, Ronald Shamma, Henry Sparks, M.D.,[1] Gretchen Sprock, Victoria Stevens, and Arthur Stockman, M.D. (collectively the "Hospital Respondents"). By this brief, the Hospital Respondents oppose the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit filed by John C.H. Wee, M.D. ("Dr. Wee") and Mrs. Nancy Young-OK-Song Wee.

COUNTERSTATEMENT OF THE CASE

A. Introduction

The procedural history of this case demonstrates Petitioners' abuse of the legal process. By judgment dated and entered on April 17, 1996, the district court (Scullin, J.) dismissed this action in its entirety for failure to state a claim. (A.17-33.) The court then denied Petitioners' motion for reconsideration. (A.36-40.) The Second Circuit Court of Appeals affirmed the judgment of dismissal (A.78-81), and later denied Petitioners' motion for rehearing. (A.88-89.) Likewise, on March 9, 1998, the Supreme Court denied Petitioners'

1. Retired Admiral Henry Sparks, M.D., died on February 7, 1997.

petition for a writ of certiorari (A.90); and on April 27, 1998, denied Petitioners' motion for a rehearing. (A.91.) Five months later, and 2½ years after entry of the judgment dismissing this action, Petitioners started over again by moving to vacate the 1996 judgment of dismissal pursuant to Rule 60(b)(5) and (6) of the Federal Rules of Civil Procedure.

However, this motion was rejected by the District Court (A.11-16), and the denial was affirmed by the Second Circuit Court of Appeals. (A.1-4.) In fact, that Court warned Petitioners that further frivolous filings "may lead to the imposition of sanctions against them or an injunction barring them from filing further actions in [that] Court." (A.4.) Ignoring this warning, Petitioners moved for rehearing en banc. The Second Circuit denied that motion as well.

B. Background Information

This matter arose from the Hospital's restriction of Dr. Wee's clinical privileges to perform urological surgery at the Hospital until he received additional medical training in that specialty. The restriction, imposed in July, 1990 after a lengthy hospital peer review process, resulted from a review of medical procedures performed by Dr. Wee that raised substantial quality of care concerns. Rather than obtain additional training, Dr. Wee embarked upon a campaign of litigation.

C. The First Federal Court Action ("Action 1")

On June 25, 1991, Petitioners commenced Action 1 in the United States District Court for the Northern District of New York (McAvoy, J.). Petitioners asserted the following federal and state law claims: 15 U.S.C. §§ 1 and 2 (Sherman Antitrust Act); 15 U.S.C. §§ 34-36 (Local Government Antitrust Act); 42 U.S.C. §§ 1981, 1982 and 1983; First, Fifth, Sixth, Eighth

and Fourteenth Amendments to the Constitution; 42 U.S.C. § 11101 (the Health Care Quality Improvement Act of 1986); 18 U.S.C. §§ 1951, 1961 and 1962 (RICO); New York General Business Law § 340 (State Antitrust Act); Executive Law § 291 and 296 (unspecified); common law principles of unfair competition; and libel and slander.

By Order dated January 30, 1992, the district court: (i) dismissed Action 1 with prejudice in its entirety against the City of Rome; and (ii) as against all other defendants, dismissed with prejudice Petitioners' claims under the Health Care Quality Improvement Act; 42 U.S.C. §§ 1981, 1982 and 1983; and the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. The court reserved decision on the RICO, antitrust, and pendent state law claims.

By unpublished Amended Decision and Order dated July 29, 1992, the district court dismissed these claims without prejudice based upon Dr. Wee's failure to exhaust his administrative remedy with the New York State Public Health Council ("PHC").[2] Petitioners did not appeal from the January 30, 1991 Order or the July 29, 1992 Order. Dr. Wee pursued his administrative remedy with the PHC, which ruled in favor of the Hospital.

D. The Second Federal Court Action ("Action 2")

Petitioners filed Action 2 in July 1993 in the United States District Court for the Northern District of New York (Scullin, J.). The claims and allegations in Action 2 are nearly identical to those dismissed in Action 1. In Action 2, Petitioners asserted

2. Under New York Law, a physician must pursue his administrative remedy before the New York State Public Health Council prior to seeking judicial review of a hospital's limitation of medical staff appointment or clinical privileges.

claims under: (i) 42 U.S.C. §§ 1983 and 1985; (ii) the First and Fourteenth Amendments to the United States Constitution; (iii) 15 U.S.C. §§ 1, 2, and 15(a); (iv) 18 U.S.C. §§ 1951, 1961, 1962 and 1964(c); and (v) various supplemental state law claims.

By unpublished Decision and Order dated April 15, 1996, the District Court dismissed Action 2 in its entirety. The Court held that *res judicata* barred Petitioners' claims under 42 U.S.C. §§ 1983, based on the Federal District Court's dismissal of these claims in Action 1. The Court also dismissed Petitioners' antitrust claims as barred by the State Action Doctrine, and dismissed the remaining federal claims for failure to allege facts sufficient to state a claim. Judgment dismissing the action in its entirety for failure to state a claim was entered on April 17, 1996.

By Order dated November 19, 1996, the district court denied Petitioners' motion for reconsideration.

E. The Court of Appeals Affirms

In an unpublished *Per Curium* Decision and Order, filed on August 14, 1997, the Second Circuit Court of Appeals affirmed the district court's dismissal of Action 2. The Circuit Court found that it was "in agreement with the District Court," and affirmed the judgment "for substantially the same reasons stated by that court." Petitioners' motion for a rehearing with a suggestion for rehearing in banc was denied by the Second Circuit on October 7, 1997.

F. The Supreme Court Denies Petitioners' Petition For a Writ of Certiorari and Petition For Rehearing

By Order dated March 9, 1998, the Supreme Court denied Petitioners' petition for a Writ of Certiorari. By Order dated

April 27, 1998, the Supreme Court denied Petitioners' petition for a rehearing.

G. Petitioners' Rule 60 Motion

On September 14, 1998 — nearly five months after the Supreme Court's determination — petitioners brought a Rule 60 motion before the district court seeking "Relief From Final Decision and Order and Final Judgment." The grounds of Petitioners' motion were: (i) the order was based on a judgment that has been reversed; and (ii) fraud by the Court and the parties. The Hospital Respondents opposed the motion because: (i) it was not timely filed; (ii) the district Court Order and Judgment from which Petitioners sought relief was not based in any respect on a state court order that was reversed; and (iii) the "fraud" alleged by Petitioners is inherently incredible, encompassing nearly all aspects of this action, and seemingly asserted equally against the parties, Judge Scullin, his law clerks, and the district court generally.

H. The District Court Denies Petitioners' Rule-60 Motion

By Order filed December 15, 1998, the district court denied Petitioners' motion. The court held that even assuming, *arguendo,* that the motion was timely, the Petitioners failed to establish any factor set forth in Rule 60(b) entitling them to relief. The court held that:

> Simply put, plaintiffs have fully and completely litigated the propriety of the dismissal of their action, without success. The Wees have submitted nothing in their present submissions indicating that the dismissal of their action was in any way erroneous.

(A.4.)

REASONS FOR DENYING THE WRIT

Petitioners' primary argument is that the District Court treated them unfairly and committed fraud on the Court in dismissing their lawsuit. Since these factual claims were rejected by the Second Circuit Court of Appeals, this argument clearly does not merit Supreme Court review.[3] Moreover, the lower courts' decisions are in complete harmony with decisions of other Circuit Courts of Appeals.[4] Accordingly, a writ is not appropriate in this case.[5]

The District Court Was Correct in Denying Petitioners' Rule 60 Motion

Petitioners asked the district court to exercise its discretionary powers by relieving them from the April 1996 final judgment dismissing the complaint. However, "relief

3. Rule 10 of this Court's Rules provides that "a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or misapplications of a properly stated rule of law."

4. Rule 10 provides that

> a writ of certiorari will be granted only for compelling reasons, and provides, as the primary factor for consideration as to whether such a writ should be granted, [whether] a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter.

5. Chief Justice Rehnquist has written that Rule 10 was adopted since the Supreme Court "receive[s] nearly 7,000 petitions for certiorari every term [and] a high degree of selectivity is thereby enjoined upon [the Court] in exercising [its] certiorari jurisdiction. . . ." *Hubbard v. United States*, 514 U.S. 695, 115 S. Ct. 1754, 1767 (1995) (Rehnquist, C.J., dissenting).

under Rule 60(b) is an 'extraordinary remedy,' and is granted only in exceptional circumstances." *See Dickerson v. Board of Education*, 32 F.3d 1114, 1116 (7th Cir. 1994). A party "must show extraordinary circumstances that create a substantial danger that the underlying judgment was unjust." *See Daniels v. Brennan*, 887 F.2d 783, 790 (7th Cir. 1989). *See also Dowell v. State Farm Fire and Cas. Auto. Ins. Co.*, 993 F.2d 46, 48 (4th Cir. 1993) ("before a party may seek relief under Rule 60(b), a party must show timeliness, a meritorious defense, a lack of unfair prejudice to the opposing party, and exceptional circumstances.") Moreover, "After a party has crossed this initial threshold, he then must satisfy one of the six specific sections of Rule 60(b)." *Id.*

The district court was correct in holding that Petitioners' motion fails to meet this standard. The motion demonstrated no exceptional circumstances; it simply repeated arguments previously raised and rejected by the district court, this Court of Appeals, and the Supreme Court.

A. Petitioners' Rule 60 Motion Was Untimely and Meritless

Further, while not expressly addressed by the district court, Petitioners' motion is plainly untimely. Petitioners' fraud allegations all relate to events occurring in 1996 or earlier. Likewise, the appellate modification of the state court judgment that appellants assert as a basis for relief under 60(b)(5), occurred in November 1996. Petitioners have not (and cannot) offer any justification for the extraordinary and prejudicial delay in making this motion.

Further, neither Judge McAvoy's dismissal of Action 1 nor Judge Scullin's dismissal of Action 2 was based *in any*

respect on the state court judgment dismissing Petitioners' state court action. A review of Judge McAvoy's Orders and Judge Scullin's Decision and Order, reveals that Petitioners' claims were dismissed for failure to state a claim, and that the state court dismissal played no part in the district court's determination that Petitioners' federal claims lacked merit.

Thus, the Judgment from which Petitioners seek relief is not based upon a prior judgment that has been reversed or otherwise vacated (Rule 60(b)(5)), and Petitioners' motion on this ground must be denied.

B. Petitioners' Fraud Allegations are Meritless

Petitioners' motion for 60(b) relief based on "fraud" was likewise meritless. To the extent the motion is based on purported "fraud" by the Hospital Respondents (and other Respondents), it must fail because Petitioners unsuccessfully raised the very same arguments in the district court in papers opposing dismissal motions. Thus, as the district court found, Petitioners' rehashing of their unsupported fraud allegations is no basis for Rule 60(b) relief.

For example, in *Jones v. Capital Cities/ABC*, 168 F.R.D. 477 (S.D.N.Y. 1996), the court denied a *pro se* plaintiff's fraud-based 60(b) motion, noting:

> The argument that judgment should be vacated because defendants have continued to conceal facts substantiating her claims is unavailing. Plaintiff asserts that defendants fraudulently concealed facts relevant to their alleged misconduct and therefore should have been estopped from asserting the statute of limitations

> as a defense. However, that argument was raised and rejected by the Court when it dismissed her pleading because plaintiff had failed to allege any facts which rationally supported an inference of fraudulent concealment. . . . Because plaintiff makes no additional factual allegations supporting such an inference, she has not established any basis upon which this Court could set aside the judgment pursuant to Rule 60 (b)(2) or (3).

Id. at 479.

Moreover, because "fraud" falls under Rule 60(b)(3), it is time-barred by the one year limit for seeking relief under 60(b)(1), (2) or (3). Also, Petitioners cannot seek relief under 60(b)(6), which is available only when movant "asserts a ground justifying relief that is not a ground encompassed within any of the first five clauses." *See United States v. Mercedes*, 179 F.R.D. 136 (S.D.N.Y. 1998); *see also In re Asbestos Litigation*, 173 F.R.D. 87, 90 (S.D.N.Y. 1997); *Jones,* 168 F.R.D. at 479.

As to Petitioners' allegations of "fraud upon the court," (which has no time limit), such a claim is limited to "that species of fraud which does or attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication". *See Jones*, 168 F.R.D. at 480, n.4, *citing Serzysko v. Chase Manhattan Bank*, 461 F.2d 699, 701 (2d Cir. 1972); *see also Transaero, Inc. v. LaFuerza Area Bolivini*, 24 F.3d 457 (2d Cir. 1994).

Petitioners' allegations in this regard are conclusory and patently incredible. For example, Petitioners claim that Judge Scullin falsified and fabricated facts and evidence; that the District Court "tampered" with Dr. Wee's reply papers; that Judge Scullin, his law clerk and the court clerks committed fraud and misconduct; and that Judge Scullin is a co-conspirator.

Here, as in Jones, "plaintiffs' motion amounts to no more than dissatisfaction with the Court's ruling dismissing [the] case and does not therefore allege a basis to set aside the judgment." 168 F.R.D. at 479.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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